राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 26 फरवरी, 2019 / 7 फाल्गुन, 1940

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated the 29*th October*, 2018

No: Shram (A) 6-2/2014 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding

Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment, Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	141/17	Chhavi Kashyap	G.M. M/s Kangra Vehicleads	01-03-2018
2.	593/16	Pan Raj	E.E. HPPWD, Killar	06-03-2018
3.	93/17	Jeet Singh	E.E. HPPWD, Killar	06-03-2018
4.	84/17	Rakesh	E.E. HPPWD, Bharmaur	06-03-2018
5.	226/16	Bimla	E.E. I&PH, Killar	07-03-2018
6.	308/16	Karam Dei	E.E. I&PH, Killar	07-03-2018
7.	275/16	Devi Chand	E.E. HPPWD, Killar	07-03-2018
8.	278/16	Nand Kumar	E.E. I&PH, Killar	07-03-2018
9.	447/16	Bodh Raj	E.E. HPPWD, Killar	07-03-2018
10.	392/16	Saar Dei	E.E. HPPWD, Killar	07-03-2018
11.	166/16	Devi Chand	E.E. HPPWD, Killar	07-03-2018
12.	343/16	Kishan Dei	E.E. HPPWD, Killar	07-03-2018
13.	400/16	Jaisi Ram	E.E. HPPWD, Killar	07-03-2018
14.	595/16	Jan Dei	E.E. HPPWD, Killar	12-03-2018
15.	592/16	Janak Raj	M/s Him Cylinder Ltd.	14-03-2018
16.	421/09	Sansar Chand	E.E. I&PH, Killar	15-03-2018
17.	254/10	Sukh Dev	E.E. HPPWD, Killar	16-03-2018
18.	178/16	Hishley Dolma	E.E. HPPWD, Kaza	20-03-2018
19.	176/16	Sonam Dolma	E.E. HPPWD, Kaza	20-03-2018
20.	175/16	Dorje Dolma	E.E. HPPWD, Kaza	20-03-2018
21.	177/16	Dorje Dolma	E.E. HPPWD, Kaza	20-03-2018
22.	309/15	Karam Chand	D.F.O. Jogindernagar	23-03-2018
23.	230/16	Sanjay Kumar	E.E. HPPWD, Bharmaur	23-03-2018
24.	81/16	Narayan Singh	E.E. HPPWD/I&PH, Killar	24-03-2018
25.	85/16	Sheela	E.E. HPPWD/I&PH, Killar	26-03-2018
26.	75/16	Amar Dei	E.E. HPPWD/I&PH, Killar	26-03-2018
27.	77/16	Ajeet Kumar	E.E. HPPWD/I&PH, Killar	26-03-2018
28.	66/16	Chandro	E.E. HPPWD/I&PH, Killar	26-03-2018
29.	539/16	Ram Singh	E.E. HPPWD, Killar	27-03-2018
30.	219/16	Pan Dei	E.E. HPPWD, Killar	27-03-2018
31.	542/16	Man Dei	E.E. HPPWD, Killar	27-03-2018

32.	69/16	Mandai	E.E. HPPWD, Killar	27-03-2018
33.	220/16	Hari Singh	E.E. HPPWD, Killar	27-03-2018
34.	298/16	Anjana	E.E. HPPWD, Killar	27-03-2018
35.	309/16	Udar Nath	E.E. HPPWD, Killar	27-03-2018
36.	141/06	Chet Ram	A.S.E. HPSEB, Jogindernagar	26-03-2018
37.	48/08	Kunta Devi	E.E. HPSEB, Dalhousie	31-03-2018
38.	42/13	Sunil Kumar	M.D. M/S Luminous Power	31-03-2018

By order,
NISHA SINGH, IAS,
Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref : No. 141/ 2017

Miss Chhavi Kashyap d/o Sh. Bal Krishan, r/o Village Rajgarh, P.O. and Tehsil Dehra, District Kangra, H.P. ..*Petitioner.*

Versus

The General Manager, M/s Kangra Vehicleads at Malan, Tehsil Nagrota Bagwan, District Kangra, H.P. ..*Respondent.*

01-03-2018 *Present:* None for the petitioner
Sh. R. C. Katoch, G.M. M/s Kangra Vehicleads in pereson for the respondent.

Heard. Sh. R. C. Katoch, G. M. M/s Kangra Vehicleads for the respondent has made statement on oath that respondent has deposited a sum of Rs. 1283/-(Rs. One Thousand Two Hundred and Eighty Three only) in her account in Punjab National Bank, Dehra today in pursuance to statement made by the petitioner before this Court on 10-01-2018. In support of his statement Sh. R. C. Katoch has tendered letter dated 01-03-2018 alongwith deposit slip of P.N.B. Dehra Branch which is placed on record. It can be nothing from the record that petitioner had made statement before this Court on 10-01-2018 that she has not been paid salary for seven days by respondent besides stated that she does not want to proceed with this case and she had already been appointed as Computer Operator in 220 KV at Jassur. Statements of parties as stated above stands recorded and placed on file. In view of the statements so made by both the parties, the reference no. 141/17 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs

3. The reference is answered in the aforesaid terms

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records

Announced:
01-03-2018

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT CHAMBA)

Ref : No. 593/ 2016

Sh. Pan Raj s/o Sh. Sunni Ram, Village & P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P.
..*Respondent.*

06-03-2018 *Present*: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.37 A.M. Be awaited and put up after lunch hours.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

06-03-2018 *Present*: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.37 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let a copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
06-03-2018

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMPT AT CHAMBA)

Ref: No. 93/ 2017

Sh. Jeet Singh s/o Sh. Param Dass, r/o V.P.O. Mindhal, Tehsil Pangi, District Chamba, H.P.
..*Petitioner.*

Versus

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P.
..*Respondent.*

06-03-2018 *Present*: None.

Notice sent for service of respondent has not been received back served or unserved. Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

06-03-2018 *Present*: None

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs

Let a copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
06-03-2018

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT CHAMBA)

Ref: No. 84/ 2017

Sh. Rakesh s/o Shri Bal Mukund, r/o V.P.O. Rakh, Tehsil & District Chamba, H.P.
.. *Petitioner.*

Versus

The Executive Engineer, HPPWD (B&R) Division, Bharmaur, District Chamba, H.P.

06-03-2018 *Present*: None for the petitioner
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

Sd/-
K. K.SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

06-03-2018 *Present*: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs

Let a copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
06-03-2018

Sd/-
K. K.SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)

Ref. No. : 226/2016
Date of Institution : 16-04-2016
Date of Decision : 07-03-2018

Smt. Bimla w/o Shri Tilak Raj, r/o Village Hillour, P.O. Sahali, Tehsil Pangi, District Chamba, H.P.
.. *Petitioner.*

Versus

The Executive Engineer, I&PH Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. ..*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Smt. Bimla w/o Sh. Tilak Raj, Village Hillour, P.O. Sahali, Tehsil Pangi, Distt. Chamba, H.P. during September 2004 by the Executive Engineer, I&PH Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 478.5 days during the year 1994 to 2004 and has raised her industrial dispute *vide* demand notice dated 27-8-2012 after more than 8 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year 1994 to 2004 and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the year 1994 who continuously worked till September 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-worker's who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage worker's working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/ respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no

opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. She further prayed for reinstatement in service *w.e.f.* month of September 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 & 26 and 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal, Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:—

(1) Whether termination of services of the petitioner by the respondent during Sept., 2004 is/was improper and unjustified as alleged? . .*OPP*

(2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*

(3) Whether the claim petition is not maintainable in the present form? . .*OPR*

(4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . .*OPR*

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes
Issue No. 2 : Discussed
Issue No. 3 : No
Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump-sum compensation of Rs. 60,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division of Chamba district and remained engaged from 1994 to 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all

the other consequential service benefits. The petitioner has further alleged on oath that respondent/ department after terminating her services in 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 45 days in the year 1994, 152.5 days in 1995, 91 days in 1996, 93 days in 2003 and 97 days in 2004 and thus a total of her service in 1994 to 2004 in 05 years she had worked for 478 ½ days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 97 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2002 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the

mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service as reflected in Ex. RW1/C the year-wise mandays details of workers engaged in HPPWD Division Killar (Pangi). This document further showed that workmen from serial no.1 to 25 have been appointed on the basis of award of labour court and serial no. 26 and 27 as harness case. Thus, plea that persons were directed to be appointed in pursuance to awards/orders were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 5 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'.** Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that

petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court 2007 (*supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows-
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State

Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-Operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** Vs. **Garibu Ram, Latest HLJ 2007 (H.P.) 1160,** delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947 Sections 25-F and 10- Limitation Act, 1963-Section 5- Industrial Dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation o section 25-F of the I.D. Act, Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court, Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act, Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but**

surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 478 ½ days as per mandays chart on record and that the services of petitioner were disengaged in 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given from 27-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 54 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 60,000/- (Rupees sixty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

*Issue no.*3 :

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the

reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of March, 2018.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT CHAMBA)

Ref. No. : 308/2016
Date of Institution : 12-05-2016
Date of Decision : 07-03-2018

Smt. Karam Dei w/o Shri Vidyadhar, r/o Village Monjhi, P.O. Sechu, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*

Versus

The Executive Engineer, I&PH Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. . .*Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Smt. Karam Dei w/o Sh. Vidyadhar Village Monjhi, P.O. Sechu, Tehsil Pangi, Distt. Chamba, H.P. from 10/2001 by the Executive Engineer I & PH Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 526 days during the year 1995 to 2001 and has raised her industrial dispute *vide* demand notice dated 27-8-2012 after more than 10

years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned above and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster-roll basis in the year 1995 who continuously worked till October 2001 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October 2001 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of October 2001 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October 2001 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2001. She further prayed for reinstatement in service *w.e.f.* month of October, 2001 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to 2001 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2004 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by

stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2001 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 & 26 and 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal, Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2001, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4.10.2017 for determination which are as under:

(1) Whether termination of services of the petitioner by the respondent from October, 2001 is/was improper and unjustified as alleged? . .*OPP*

(2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*

(5) Whether the claim petition is not maintainable in the present form? . .*OPR*

(6) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . .*OPR*

(5) Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes
Issue No. 2 : Discussed
Issue No. 3 : No
Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding *lump-sum* compensation of Rs. 70,000/- per operative part of award.

REASONS FOR FINDINGS

*Issues No.*1, 2 *and* 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division of Chamba district and remained engaged from 1995 to 2001. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in 2001 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically

admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 81 days in the year 1995, 145 days in 1997, 76 days in 1998, 88 days in 1999, 72 days in 2000 and 64 days in 2001 and thus a total of her service from 1995 to 2001 in 06 years she had worked for 526 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2001 the petitioner had merely worked for 64 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-s1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1995 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs**. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service as reflected in Ex.

RW1/C the year-wise mandays details of workers engaged in HPPWD Division Killar (Pangi). This document further showed that workmen from serial no.1 to 25 have been appointed on the basis of award of labour court and serial no.26 and 27 as harness case. Thus, plea that persons were directed to be appointed in pursuance to awards/orders were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 6 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in 2001, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** Vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'.** Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon"ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision

has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

> "10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by

showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** Vs. **Garibu Ram, Latest HLJ 2007 (H.P.) 1160,** delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** Vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled **as Assistant Engineer, Rajasthan State Agriculture Marketing**

Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act. Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court. Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 526 days as per mandays chart on record and that the services of petitioner were disengaged in 2001 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years** *i.e.* demand notice was given from 27-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 54 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (**SC**). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing**

Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v**. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

Issue No. 3 *:*

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room

Announced in the open Court today this 7th day of March, 2018.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)

Ref. No. : 275/2016
Date of Institution : 04-05-2016
Date of Decision : 07-03-2018

Shri Devi Chand s/o Shri Dhani Ram, r/o Village Kumar, P.O. Kumar, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, HPPWD Pangi at Killar, District Chamba, H.P. . .*Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Sh. Devi Chand s/o Sh. Dhani Ram, Village Kumar, P.O. Kumar, Tehsil Pangi, Distt. Chamba, H.P. during 2001 by the Executive Engineer, HPPWD Division, Pangi at Killar Tehsil Pangi District Chamba, H.P. who had worked as beldar on daily wages basis only for 336 days during the year 1994 to 2001 and has raised his industrial dispute *vide* demand notice dated 27-8-2012 after more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year 1994 to 2001 and delay of more 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the year 1994 who continuously worked till 2001 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of 2001 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster-roll and thus

the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the year 2001 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month‟s wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from 2001 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the year 2001. He further prayed for reinstatement in service in the year 2001 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to 2001 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2001 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 & 26 and 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal, Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2001, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Authorized Representative of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:—

(1) Whether termination of the services of the petitioner by the respondent during Year 2001 is/was improper and unjustified? . .*OPP*

(2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to?

(3) Whether the claim petition is not maintainable in the present form? . .*OPR*

(4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . .*OPR*

(5) Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes
Issue No. 2 : Discussed
Issue No. 3 : No
Issue No. 4 : Discussed
Relief : Petition is partly allowed awarding lump-sum compensation of Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner‟s termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division of Chamba district and remained engaged from 1994 to 2001. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 2001 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 62 days in the year 1994, 75 days in 1995, 84 in 1999, 59 days in 2000 and 56 days in 2001 and thus a total of his service in 1994 to 2001 in 05 years he had worked for 336 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2001 the petitioner had merely worked for 56 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1994 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after 2001 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs**. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service as reflected in Ex. RW1/C the year-wise mandays details of workers engaged in HPPWD Division Killar (Pangi). This document further showed that workmen from serial no.1 to 25 have been appointed on the basis of award of labour court and serial no. 26 and 27 as harness case. Thus, plea that persons were directed to be appointed in pursuance to awards/orders were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 5 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in 2001, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'.** Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to

maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v**. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-
>
> > "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. *(supra*) 1993 AIR SCW 2214, it was held that a casual labourer

retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17**. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the

Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (H.P.) 1160,** delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5 Industrial Dispute- Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I. D. Act. Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court. Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service-**Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another** Vs**. Geetam**

Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years.** The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 336 days as per mandays chart on record and that the services of petitioner were disengaged in 2001 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years** *i.e.* demand notice was given on 27-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 50 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon‟ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (**SC**). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984 titled as Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (**2016**) *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

*Issue No.*3 :

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room

Announced in the open Court today this 7th day of March, 2018

Sd/-
(K.K. SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT CHAMBA)

Ref. No. : 278/2016
Date of Institution : 04-05-2016
Date of Decision : 07-03-2018

Shri Nand Kumar s/o Shri Sham Dass Kumar, Village Kumar, P.O. Kumar, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*

Versus

The Executive Engineer, I&PH Division, Pangi at Killar, District Chamba, H.P.
..*Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Sh. Nand Kumar s/o Sh. Sham Dass, Village Kumar, P.O. Kumar, Tehsil Pangi, Distt. Chamba, H.P. during November 1997, by the Executive Engineer, I & PH Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 61 days during the year 1997 and has raised his industrial dispute *vide* demand notice dated 31-12-2011 after more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned above during the year 1997 and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the year 1994 who continuously worked till 1997 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of November 1997 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster-roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the year 1997 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month‟s wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from 1997 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the year 1997. He further prayed for reinstatement in service in the year 1997 alongwith back wages, seniority including continuity in service as petitioner has remained

unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to 1997 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 & 26 and 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal, Dharamshala as harness case. It is also contended that if petitioner had been terminated in 1997, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:—

(1) Whether termination of the services of the petitioner by the respondent during November, 1997 is/was improper and unjustified? . .*OPP*

(2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*

(3) Whether the claim petition is not maintainable in the present form? . .*OPR*

(4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . .*OPR*

(5) Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.*1 : Yes
*Issue No.*2 : Discussed
*Issue No.*3 : No
*Issue No.*4 : Discussed
Relief : Petition is partly allowed awarding lump-sum compensation of Rs.20,000/- per operative part of award.

REASONS FOR FINDINGS

*Issues No.*1, 2 *and* 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division of Chamba district and remained engaged from 1994 to 1997. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 1997 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not

make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1997. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in crosse-xamination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 61 days in the year 1997 and thus a total of his service from September 1997 to November 1997 in a year he had worked for 61 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1997 the petitioner had merely worked for 61 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after 2001 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld.

Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service as reflected in Ex. RW1/C the year-wise mandays details of workers engaged in HPPWD Division Killar (Pangi). This document further showed that workmen from serial no.1 to 25 have been appointed on the basis of award of labour court and serial no. 26 and 27 as harness case. Thus, plea that persons were directed to be appointed in pursuance to awards/orders were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 1 year which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in 1997, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in ann establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'.** Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent wasb receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs**. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned

Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka[4]** it was held by this Court as follows:—

> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.
>
> 15. In the case of Ajaib Singh *v.* The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wagesm instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1997 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (H.P.) 1160,** delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial Dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act. Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years.** The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 01 year and actually worked for 61 days as per mandays chart on record and that the services of petitioner were disengaged in 1997 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **thirteen years** *i.e.* demand notice was given on 31-12-2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 42 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined

on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment (2016) *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

*Issue No.*3 :

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of March, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)

Ref. No. : 447/2016
Date of Institution : 28-08-2016
Date of Decision : 07-03-2018

Shri Bodh Raj s/o Shri Shiv Lal, r/o Village & P.O. Sahali, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*

Versus

The Executive Engineer, HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. . .*Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Sh. Bodh Raj s/o Sh. Shiv Lal, Village & P.O. Sahali, Tehsil Pangi, Distt. Chamba, H.P during 7/2004 by the Executive Engineer, HPPWD Division, Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 227.5 days during the year 2001, to 2004 and has raised his industrial dispute *vide* demand notice dated 27-8-2012 after more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the

month of May, 1994 who continuously worked till July 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of July 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the year 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from July 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of July 2004. He further prayed for reinstatement in service in the year 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2001 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial Nos. 1 to 24 & 26 and 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial Nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal, Dharamshala as harness

case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Authorized Representative of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:

(1) Whether termination of the services of the petitioner by the respondent during July 2004 is/was improper and unjustified? . .*OPP*

(2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*

(3) Whether the claim petition is not maintainable in the present form? . .*OPR*

(4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . .*OPR*

(5) Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump-sum compensation of Rs. 30,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 *and* 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 2001 till 2004 whereas the claimant/petitioner alleges that he had worked from May 1994 to July 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the year 2001 and not in 1994. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 2001 to 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2004. No reason

whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 38 days in the year 2001, 86 days in 2003 and 31 days in 2004 and thus a total of his service from 2001 to 2004 in 03 years he had worked for 155 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 31 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2001 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2001 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service as reflected in Ex. RW1/C the year-wise mandays details of workers engaged in HPPWD Division Killar (Pangi). This document further showed that workmen from serial No.1 to 25 have been appointed on the basis of awards of labour court and serial No. 26 and 27 as harness case. Thus, plea that persons were

directed to be appointed in pursuance to awards/orders were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 3 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'.** Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate

government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows:—

> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-Operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

> "10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board,

dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160,** delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had

completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years.** The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 155 days as per mandays chart on record and that the services of petitioner were disengaged in 2004 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** *i.e.* demand notice was given on 27-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 34 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.**

I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 30,000/- (Rupees thirty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

*Issue No.*3 :

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of March, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)

Ref. No. : 392/2016
Date of Institution : 15-06-2016
Date of Decision : 07-03-2018

Smt. Saar Dei w/o Shri Amar Chand, r/o Village Sandharipar, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. . .*Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Smt. Saar Dei w/o Sh. Amar Chand, Village Sandharipar, P.O. Udeen, Tehsil Pangi, Distt. Chamba, H.P. during 9/2003 by the Executive Engineer, HPPWD Division, Killar (Pangi) Tehsil Pangi District Chamba, H.P. who had worked as beldar on daily wages basis only for 78 days during the year 2002 to 2003 and has raised her industrial dispute *vide* demand notice dated 18-1-2013 after more than 10 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster-roll basis in the year 1994 who continuously worked till September 2003 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September 2003 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster-roll and thus the action of respondent/department was stated to be unjustified and malafide.

It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/ respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September 2003 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September 2003. She further prayed for reinstatement in service *w.e.f.* month of September 2003 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2002 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 & 26 and 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2003, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Authorized Representative of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4.10.2017 for determination which are as under:—

(1) Whether termination of services of the petitioner by the respondent during Sept. 2003 is/was improper and unjustified as alleged? . .*OPP*

(2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*

(3) Whether the claim petition is not maintainable in the present form? . .*OPR*

(4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . .*OPR*

(5) Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 :	Yes
Issue No. 2 :	Discussed
Issue No. 3 :	No
Issue No. 4 :	Discussed
Relief. :	Petition is partly allowed awarding lump-sum compensation of Rs. 25,000/- per operative part of award.

REASONS FOR FINDINGS

Issue No.1, 2 *And* 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 2002 till 2003 whereas the claimant/petitioner alleges that he had worked from 1994 to September 2003. Since the

claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the year from 2002 to 2003 and not from 1994 to 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 2002 to 2003. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 25 days in the year 2002 and 53 days in 2003 and thus a total of her service in 2002 to 2003 in a year she had worked for 78 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with

regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 53 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2002 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2002 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service as reflected in Ex. RW1/C the year-wise mandays details of workers engaged in HPPWD Division Killar (Pangi). This document further showed that workmen from serial no.1 to 25 have been appointed on the basis of award of labour court and serial no. 26 and 27 as harness case. Thus, plea that persons were directed to be appointed in pursuance to awards/orders were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 2 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in 2003, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of

Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> **13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist**. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows:—

> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-Operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

> "10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred

the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court**. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160,** delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon"ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial Dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Wrokman worked from 1-11-1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 78 days as per mandays chart on record and that the services of petitioner were disengaged in 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years** *i.e.* demand notice was given from 18.1.2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 54 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon"ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the

petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

Issue No. 3

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of March, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)

Ref. No. : 166/2016
Date of Institution : 17-03-2016
Date of Decision : 07-03-2018

Shri Devi Chand s/o Shri Shayam Dass, r/o Village Chasak, P.O. Sechu, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. . .*Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Shri Devi Chand s/o Shri Shayam Dass, r/o Village Chasak, P.O. Sechu, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 27-08-2012 regarding alleged illegal termination of his services during July 2004 suffers from delay and latches? If not, Whether termination of services of Shri Devi Chand s/o Shri Shayam Dass, r/o Village Chasak, P.O. Sechu, Tehsil Pangi, District Chamba, H.P. during July 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the year 1994 who continuously worked till July 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of July 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster-roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of July 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of July 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly

alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner, prays for setting aside oral order of termination/retrenchment by the respondent in the month of July 2004. He further prayed for reinstatement in service *w.e.f.* month of July, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 & 26 and 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:—

(1) Whether the industrial dispute raised by petitioner vide demand notice dated 27-08-2012 qua his termination of service during July 2004 by respondent suffers from the vice of delay and laches as alleged? . .*OPP*

(2) Whether termination of the services of petitioner by the respondent during July 2004 is/was illegal and unjustified as alleged? . .*OPP*

(3) If issue no.1 or issue no. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*

(4) Whether the claim petition is not maintainable in the present form as alleged? ..OPR

(5) Relief:

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Discussed
Issue No. 2 : Yes
Issue No. 3 : Discussed
Issue No. 4 : No
Relief. : Petition is partly allowed awarding lump-sum compensation of Rs. 40,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *And* 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1997 till 2004 whereas the claimant/petitioner alleges that he had worked from 1994 to July 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the year 1997 and not in 1994. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 1997 to 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was

illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 59 days in the year 1997, 56.5 days in 1998, 48 days in 1999, 57 days in 2000, 45.5 days in 2002 and 29 days in 2004 and thus a total of his service in 1997 to 2004 in 06 years he had worked for 295 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 56 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the

petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service as reflected in Ex. RW1/C the year-wise mandays details of workers engaged in HPPWD Division Killar (Pangi). This document further showed that workmen from serial no.1 to 25 have been appointed on the basis of award of labour court and serial no. 26 and 27 as harness case. Thus, plea that persons were directed to be appointed in pursuance to awards/orders were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 6 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the

relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows-
>
> > "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above

judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

> "10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160,** delay of more than 10 years was condoned besides Hon"ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial Dispute- Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the Ld. Authorized Representative as well as Ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs**. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years.** The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but**

surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 295 days as per mandays chart on record and that the services of petitioner were disengaged in 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eighty years** *i.e.* demand notice was given on 27-8-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 53 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon"ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

Issue No.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the

reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of March, 2018.

Sd/-
(K.K. SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)

Ref.No. : 343/2016
Date of Institution : 26-05-2016
Date of Decision : 07-03-2018

Smt. Kishan Dei w/o Shri Tara Chand, r/o Village Micham, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. . . *Petitioner*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. . .*Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Smt. Kishan Dei, w/o Shri Tara Chand, r/o Vill. Micham, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. during 1/2004 by the Executive

Engineer, H.P.P.W.D. Division Killar, District Chamba, H.P., who has worked as beldar on daily wages basis and has raised her industrial dispute after 9 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 27, 76, 49, 69, 48.5, 123.5, 85 and 70 days during years 1996, 1997, 1999, 2000, 2001, 2002, 2003 and 2004 respectively and delay of 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster-roll basis in the year 1996 who continuously worked till November 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of November 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/ respondent. The petitioner has named 23 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of November, 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of November 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of November 2004. She further prayed for reinstatement in service *w.e.f.* month of November 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1996 to 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2005 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 19 & 26 and 21 & 23 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 20 & 22 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no. 4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:—

(1) Whether termination of services of the petitioner by the respondent during November, 2004 is/was improper and unjustified as alleged? . .*OPP*

(2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*

(3) Whether the claim petition is not maintainable in the present form? . .*OPR*

(4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . .*OPR*

(5) Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 :	Yes
Issue No. 2 :	Discussed
Issue No. 3 :	No
Issue No. 4 :	Discussed
Relief. :	Petition is partly allowed awarding lump-sum compensation of Rs. 75,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 1996 to 2004. she has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be

established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in crossexamination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 27 days in the year 1996, 76 days in 1997, 49 days in 1999, 69 days in 2000, 48.5 days in 2001, 123.5 days in 2002, 85 days in 2003 and 70 days in 2004 and thus a total of her service in 1996 to 2004 in 08 years she had worked for 548 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 70 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1996 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs**. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act**.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service as reflected in Ex. RW1/C the year-wise mandays details of workers engaged in HPPWD Division Killar (Pangi). This document further showed that workmen from serial no.1 to 25 have been appointed on the basis of award of labour court and serial no. 26 and 27 as harness case. Thus, plea that persons were directed to be appointed in pursuance to awards/orders were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'.** Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon‟ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC**) and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of

the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants then High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

> "10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the

relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160,** delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld.

Authorized Representative for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. Her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service-**Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra)* before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years.** The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon"ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 548 days as per mandays chart on record and that the services of petitioner were disengaged in 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years** *i.e.* demand notice was given in the year 2013. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 56 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also

the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984 titled as Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment (**2016**) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of March, 2018.

Sd/-
(K.K. SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)

Ref. No.	:	400/2016
Date of Institution	:	16-6-2016
Date of Decision	:	07-03-2018

Shri Jaisi Ram s/o Shri Ghatto Ram, r/o Village Udeen P.O. Shoon, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. . .*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	:	Sh. I.S. Jaryal, AR
For the Respondent	:	Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Shri Jaisi Ram s/o Shri Ghatto Ram, r/o Village Udeen, P.O. Shoon, Tehsil Pangi, District Chamba, H.P. during September 2004 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 15-07-2012 after more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 31, 157, 176, 194, 26 and 45 days during 1994, 1995, 1996, 1997, 1998 and 2004 respectively and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the

year 1994 who continuously worked till September 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/ respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of September 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the servicesm of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September 2004. He further prayed for reinstatement in service *w.e.f.* month of September 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to September 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar *vs.* State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 & 26 and 28 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no. 4 are stated to have

engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Authorized Representative of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 4-10-2017 for determination which are as under:—

(1) Whether termination of the services of the petitioner by the respondent during Sept. 2004 is/was improper and unjustified? . .*OPP*

(2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*

(3) Whether the claim petition is not maintainable in the present form? . .*OPR*

(4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . .*OPR*

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump-sum compensation of Rs. 75,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 *And* 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 1994 to September 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by

the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil, area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 31 days in the year 1994, 157 days in 1995, 176 days in 1996, 194 days in 1997, 26 days in 1998 and 45 days in 2004 and thus a total of his service in 1994 to 2004 in 05 years he had worked for 629 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 45 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1994 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service as reflected in Ex. RW1/C the year-wise mandays details of workers engaged in HPPWD Division Killar (Pangi). This document further showed that workmen from serial no.1 to 25 have been appointed on the basis of award of labour court and serial no. 26 and 27 as harness case. Thus, plea that persons were directed to be appointed in pursuance to awards/orders were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 5 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-

H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'.** Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief**

accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

> "10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court**. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160,** delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial Dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D. Act. Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial

discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years.** The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 629 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about seven years *i.e.* demand notice was given on 15.7.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 41 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984 titled as Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the

above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs. 75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

Issue No. 3

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of March, 2018.

Sd/-
(K.K. SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 595/ 2016

Miss Jan Dei d/o Sh. Vishan Lal, Village Chalauli, P.O. Dharwas, Tehsil Pangi, Distt. Chamba H.P. . .*Petitioner.*

Versus

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P. . .*Respondent.*

12-03-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(K.K.SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

12-03-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
12-03-2018

Sd/-
(K.K.SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial, Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. : 592/16

Sh. Janak Raj, President, Him Cylinder & Him Alloys Workers Union, Affiliated with INTUC, Tehsil Amb, District Una, H.P. . .*Petitioner.*

Versus

The Employer/General Manager, M/s Him Cylinders Limited, Plot No.1 to 4, Industrial Area Amb, District Una, H.P. . .*Respondent.*

14-03-2018 Present: Petitioner in person.
Sh. P.S. Thakur, General Manager for the respondent.

Heard. At this stage, petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the petitioner as stated above, the reference no. 592/16 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:
14-03-2018

Sd/-
(K.K.SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 421/ 2009

Sh. Sansar Chand s/o Sh. Sahaj Ram, r/o Village Parmar, P.O. Kumar, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, I. & P.H. Division Killar, District Chamba, H.P. . .*Respondent.*

15-03-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(K.K.SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

15-03-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
15-03-2018

Sd/-
(K.K.SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 254/2010
Date of Institution : 25-10-2010
Date of Decision : 16-03-2018

Shri Sukh Dev s/o Shri Shiv Lal, r/o V.P.O. Sechu, Tehsil Pangi, Distt. Chamba, H.P.
. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division Killar, Distt. Chamba, H.P.
. .*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Gaurav Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether termination of the services of Sh. Sukh Dev s/o Sh. Shiv Lal by the Executive Engineer, HPPWD Division Killar, Tehsil Pangi, Distt. Chamba (H.P.) *w.e.f.* October 2005

and retaining the junior workmen, as alleged by worker, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by respondent in the year 1991 who uninterruptedly worked upto year 2005 when service of petitioner had been illegally terminated without any reason. Averments made in the claim petition revealed that petitioner had completed 10 years of service as beldar who had worked more than 160 days in each calendar year of his employment. It is alleged that one Chain Singh s/o Heer Chand, r/o V.P.O. Pangi, Tehsil Chamba, District Chamba (H.P.) junior to him has been employed as daily waged beldar by the respondent. It is alleged that petitioner enquired from respondent to reveal reason for his disengagement but his request was not considered and thus the conduct of respondent is stated to be unlawful and unjustified violative of provisions of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Aggrieved with illegally and arbitrary action of the respondent, petitioner prays for setting aside his retrenchment with direction to respondent to reinstate petitioner with all consequential benefits including seniority, continuity in service and payment of back wages besides sought direction for the respondent for regularization of petitioner from the date of regularization of his juniors.

4. The respondent contested the claim petition filed reply *inter-alia* taken preliminary objections of delay and laches and maintainability. On merits denied that petitioner had worked as daily waged beldar upto the year 2005 although he had been engaged in the year 1991 when he worked upto 1999 only. Relying upon the mandays chart, it has been contended that petitioner has not completed 160 days of work being posted in tribal area of Pangi during 1991 to 1998 and in the year 1999 he had served for more than 160 days. It is claimed that petitioner used to work intermittently as per his convenience and that service of petitioner had not been actually terminated rather petitioner of his own left the job who was gainfully self employed. In so far as re-employment of Chain Singh s/o Heer Chand, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba (H.P.) in the year 2011 is concerned he had been re-engaged as per award of this court. It has been emphatically denied that any person junior to petitioner had been engaged or retained in service. It is alleged that since petitioner did not complete requisite period of 160 days he had not been considered for re-engagement and that industrial dispute was raised by petitioner has been initiated at belated stage besides being devoid of merits. Accordingly, petition was sought to be dismissed.

5. No rejoinder was filed by the petitioner.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Madan Kumar Minhas, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/A, copy of mandays chart of workers Ex. RW1/B and closed the evidence.

7. It is evident from record of this case that *vide* order dated 29.12.2011 issues were framed by and ld. predecessor and *vide* Award dated 2.6.2012 had dismissed the claim petition. Aggrieved with the dismissal of this Award, petitioner had moved to Hon'ble High Court of Himachal Pradesh by filing CWP No. 7208/2012 which had been decided on 12-7-2017 *vide* which the Hon'ble High Court had quashed the award and set aside the Award so passed by this Tribunal with direction to decide the same afresh after affording both the parties to lead additional evidence. In pursuance to remand of case, the same had been re-registered on its old number and petitioner

was allowed to lead additional evidence for which he moved an application. In his additional evidence petitioner has tendered mandays chart Ex. PA from 1998 to 2004 and Ex. PB mandays of petitioner for year 1997 and closed evidence. However, respondent did not lead any additional evidence.

8. I have heard the ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed by my ld. predecessor on 29.12.2011 for determination which are as under:—

(1) Whether the disengagement of the petitioner *w.e.f.* Oct., 2005 is violative of the provisions of Section 25-F and 25-G of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . .*OPP*

(2) Whether the claim petition is not maintainable, as alleged. If so, to what effect? . .*OPR*

(3). Whether the reference suffers from vice of delay and laches, as alleged. If so, to what effect? . .*OPR*

(4) Relief.

10. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 No
Issue No. 2 : No
Issue No. 3 : No
Issue No. 4 : Claim petition is dismissed per operative part of Award

REASONS FOR FINDINGS

Issue No. 1

11. Before adverting to oral evidence on record, it would be relevant to referred to documentary evidence adduced by petitioner prior to the remand of the case as well as after the remand of case. It would be relevant to mention here that while stepping into witness box, petitioner has merely tendered his affidavit Ex. PW1/A whereas respondent had tendered mandays chart Ex. RW1/A revealing that petitioner had worked from 1991 to 1999. Ex. PA the mandays chart of petitioner led in additional evidence shows that petitioner had worked upto 2005 and had merely worked for 87 days. Ex. PB is mandays chart pertaining to petitioner for year 1997 which showed that he had worked for 145 days. Thus, from 1997 till 2005 petitioner had worked for more than 160 days in the year 2000 and 2001 but immediately prior to his termination, he had merely worked for 87 days whereas having given employment in tribal area of Pangi in Killar Sub-Division he was required to have established having completed 160 days so as to get benefit of continuous service envisaged under Section 25-B of Industrial Disputes Act. As such, he has failed to establish to have worked for 160 days to meet out the requirement of provisions of Section 25-F of the Act. Ex. RW1/A pertains to petitioner's working days from 1991 to 1999 and according to this document, petitioner had worked for more than 160 days in the year 1999 but having led additional evidence, it can be concluded from both the mandays charts referred to above that petitioner had factually not worked for 160 days prior to his termination as stated above. Thus, from documentary evidence on record petitioner has failed to establish having worked for 160 days. While stepping into witness box as PW1, petitioner has testified on oath as maintained in the claim

petition according to which petitioner claims to have worked from 1991 to 2005 with Executive Engineer, HPPWD Pangi at Killar. The petitioner claims to have worked for more than 160 days but was removed from service illegally in violation of provisions of Section 25-F of the Industrial Disputes Act. The respondent, on the other hand has taken plea that petitioner was not factually removed from service rather petitioner of his own abandoned the job as can be gathered from testimony of RW1 who has categorically stated that petitioner had left the job and never returned. As statement of RW1 was recorded before this court on 22-5-2012, it has been impressed upon that after petitioner did not return back to resume duty. Thus, when petitioner himself left the job and not resumed duty respondent was required to issue notice to join or resume duty which had not been done in this case.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2004. No reason whatsoever has been assigned for such any inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima *facie belies* the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. Since respondent had failed to establish that any departmental inquiry was initiated qua non-attendance of petitioner or that any charge-sheet was raised and at the same time no notice was served upon petitioner, it would be unsafe to hold that petitioner had abandoned the job as contended by the respondent. However, petitioner has failed to establish that he had worked for more than 160 days preceding his termination in 12 calendar months in a year. Accordingly, when petitioner had not worked for 160 days, respondent was not required to serve any notice and at the same time, no compensation was required to be given. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Industrial Disputes Act.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, reliance has been placed upon affidavit Ex. PW1/A filed by petitioner which showed that one Chain Singh s/o Heer Chand, Village Kuthel, P.O. Sach, Tehsil Pangi, District Chamba and Tilak Raj, r/o Tehsil Pangi, District Chamba, H.P. had been retained in service who were junior to petitioner. In support of his claim reliance has been placed upon Ex. RW1/B the mandays chart of Chain Singh s/o Heer Chand, Vill. Kuthel, P.O. Sach, Tehsil Pangi, District Chamba, H.P. which shows that said Chain Singh was engaged in the year 1997 who worked upto 2004. Since this official had joined later than petitioner and had been removed in the year 2004 in no way provisions of Section 25-G of the Industrial Disputes Act was attracted. However, as per the note on Ex. RW1/B *vide* Award passed in case of Chain Singh s/o Heer Chand, he was regularized on 31-3-2012. Since regularization of Chain Singh was in pursuance to Award passed by this court, it cannot be stated that respondent had engaged and regularized said Chain Singh after year 2004 of its own but as per the direction of the court. In such like situation, it could not be stated that any person junior to petitioner had been retained and regularized. In so far as allegation of one Tilak Raj r/o Tehsil Pangi, District Chamba, H.P. is concerned, there is no document on record suggesting that said official was junior to petitioner instead petitioner had failed to prove on record any seniority list by which it could be established that Tilak Raj was junior to petitioner. Significantly, PW1 in cross-examination has maintained that Chain Singh and others as alleged in para No. 3 of his affidavit were senior to him.

That being so, there is no violation of Section 25-G of the Industrial Disputes Act on the part of the respondent. Issue no.1 is decided accordingly.

Issue No. 2

14. On the plea non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster-roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 3

15. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram** vs. **State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000,** there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager** vs. **Mohinder Kumar,** there was a delay of 14 years. In **Naginder Kumar** vs. **HPSEB and anr. 2008 (1) SLJ (H.P.) 425,** it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd.** vs. **Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh** vs. **Sirhind Co-operative Marketing-*cum*-Processing Society Limited and Another (1999) 6 SCC 82,** it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

17. As a sequel to my findings on foregoing issue no. 1, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of March, 2018.

Sd/-
(K.K. SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)

Ref. No. : 178/16

Smt. Hishley Dolma w/o Sh. Chheton Dorje, r/o V.P.O. Hurling, Tehsil Kaza, District Lahaul & Spiti, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Spiti B&R Division, H.P.P.W.D. Kaza, District Lahaul & Spiti, H.P. . .*Respondent.*

20-03-2018 Present: Petitioner with Sh. N.L. Kaundal, A.R.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Heard. At this stage, petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the petitioner as stated above, the reference no. 178/16 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:
20-03-2018

Sd/-
(K.K.SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)

Ref. No. : 176/16

Sh. Sonam Dorje s/o Sh. Dorje Tandup, r/o V.P.O. Sumra, Tehsil Yungthung, District Kinnaur, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Spiti B&R Division, H.P.P.W.D. Kaza, District Lahaul & Spiti, H.P. . .*Respondent.*

20-03-2018 Present: Petitioner with Sh. N.L. Kaundal, A.R.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Heard. At this stage, petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the petitioner as stated above, the reference no. 176/16 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:
20-03-2018

Sd/-
(K.K.SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)

Ref: No. : 175/16

Ms. Dorje Dolma d/o Sh. Rizinta , r/o V.P.O. Sumra, Tehsil Yungthung, District Kinnaur, H.P. ..*Petitioner.*

Versus

The Executive Engineer, Spiti B&R Division, H.P.P.W.D. Kaza, District Lahaul & Spiti, H.P. ..*Respondent.*

20-03-2018 Present: Petitioner with Sh. N.L. Kaundal, A.R.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Heard. At this stage, petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the petitioner as stated above, the reference no. 175/16 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:
20-03-2018

Sd/-
(K.K.SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)

Ref. No. : 177/16

Smt. Dorje Dolma w/o Sh. Ram Dass, r/o V.P.O. Sumara, Tehsil Yungthung, District Kinnaur, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Spiti B&R Division, H.P.P.W.D. Kaza, District Lahaul & Spiti, H.P. . .*Respondent.*

20-03-2018 Present: Petitioner with Sh. N.L. Kaundal, A.R.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Heard. At this stage, petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the petitioner as stated above, the reference no. 177/16 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

Announced:
20-03-2018

Sd/-
(K.K.SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 309/2015
Date of Institution : 16-7-2015
Date of decision : 23-03-2018

Shri Karam Chand s/o Shri Dila Ram, r/o Village Futta Khal, P.O. Jhatingri, Tehsil Padhar, District Mandi, H.P. . .*Petitioner*

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P. . .*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether time to time termination of the services of Shri Karam Chand s/o Shri Dila Ram, r/o Village Futta Khal, P.O. Jhatingri, Tehsil Padhar, District Mandi, H.P. from July 1997 to year 2006 thereafter on bill basis from year 2006 to November 2013 by the Divisional Forest Officer, Joginder Nagar Forest Division, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent on muster roll as daily waged forest worker *w.e.f.* July, 1997 without any written appointment order/letter who continued to work uninterruptedly under the supervision of Range Officer, Urla. The grievance of petitioner remains that the services of petitioner with the department from 1997 onwards. It is alleged that fictional breaks had been given to petitioner by respondent with the object that petitioner did not complete 240 days in any calendar year. Not only this, while giving fictional breaks in the years aforestated, respondent had not followed the principle of 'Last come First go' as the persons junior to him had been retained in service. The name of juniors are Manoj Kumar s/o Bhupender Singh who joined in 21-11-1997, Brahami Devi w/o Bidhi Chand on 1-2-1998, Krishan Devi w/o Naradhu Ram on 1-3-1998, Ramesh Chand s/o Purvia Ram on 1-1-1999, Sarpa Devi w/o Roshan Lal on 1-1-1999, Jagdish Chand s/o Kishori Lal on 1-1-2000, Nirmla Devi w/o Roop Lal on 1-3-2000, Love Kumar s/o Beli Ram on 1-2-1998 and Shyam Singh s/o Narain Singh who joined on 7-10-2008 have been retained in service by the respondent. Thus, retaining junior persons and giving fictional breaks to petitioner/claimant terminating his services could not be construed that work and funds were not available with the department when the services of petitioner had been terminated from time to time giving fictional breaks. It is also alleged that giving of fictional breaks to petitioner from 1997 to 2010 is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Vth Schedule Clause 10 of the Act. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to him be treated and counted as period of continuity in service for the purposes of his regularization and respondent be directed to grant work charge status after completion of eight years besides cost of litigation and to any other relief to which petitioner is found entitled.

4. Respondent resisted claim petition, filed reply *inter-alia* taken preliminary objections of maintainability. On merits, admitted that petitioner was initially engaged in forest department on July 1997 as casual labourer and not as daily waged forest worker as alleged for seasonal forestry works keeping in view the availability of funds and work as reflected in mandays chart. It is claimed that petitioner is still continuing to work intermittently with the department. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that he could not gets the benefit of the provisions of Section 25-B of the Act. Similarly, violation of principle of 'Last come First go' has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. It is further alleged that Smt. Nirmla Devi w/o Shri Roop Lal was engaged after policy of compassionate appointments in Dharampur range as per approval of the competent authority and also in view of order of Hon'ble SAT, HP. Similarly, Shyam Singh s/o Sh. Narain Singh was engaged as contingent paid worker on compassionate grounds after death of his father in pursuance to office order no. 6664 dated

27.9.2008 of Conservator Forests Mandi. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, Ipetitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B is the seniority list and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/C the letter dated 14th May, 1995, Ex. RW1/D the copy of order of the Hon"ble Administrative Tribunal dated 9-7-2003, copy of Award dated 13-1-2005 Ex. RW1/E, copy of letter dated 27.9.2008 Ex. RW1/F and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 20.4.2016 for determination:—

(1) Whether time to time termination of services of the petitioner by the respondent from July 1997 to 2006 thereafter on bill basis from year 2006 to November 2013 is/was illegal and unjustified as alleged? . .*OPP*

(2) If issue no. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*

(3) Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*

(4) Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:—

Issue No 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1

10. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued

to work uninterruptedly under the supervision of Range Officer, Urla. He has specifically deposed on oath that from July 1997 onwards. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of counting continuous service and that due to fictional breaks from 1997 till date, petitioner could not complete 240 days. Be it stated that petitioner has also maintained junior persons namely Manoj Kumar, Brahami Devi and Shyam Singh etc. were not given fictional breaks who completed 240 days in each year and their services have been regularized. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

11. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of July 1997 and was still working when the claim petition was filed. The contents of above-said document revealed abstract of working mandays showing that petitioner to have worked for 44 days in the year 2006, 19 days in 2005, 39 days in 2004, 24 days in 2003, 56 days in 2000, 85 days in 1999, 48 days in 1998 and 72 days in 1997. Cross-examination of petitioner as PW1 reveals that he was still employed with the respondent. He has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily remains that he had been given fictional breaks deliberately despite availability of funds and work and that persons who were junior to him were retained whereas petitioner was not issued muster-roll for whole month. It can be noticed from seniority list Ex. PW1/B that daily wagers namely Nirmala Devi, Brahami Devi, Krishna Devi, Amar Singh, Chaman Lal, Shyam Singh had joined after 1997 had completed 240 days but for no plausible reasons petitioner was not allowed to complete 240 days. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

12. It is the admitted case of the parties that petitioner had been engaged as daily wager by respondent in the month of July 1997 as has also been reflected in mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that petitioner had been engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 44 days in the year 2006, 19 days in 2005, 39 days in 2004, 24 days in 2003, 56 days in 2000, 85 days in 1999, 48 days in 1998 and 72 days in 1997 in several calendar years as per mandays chart moreover reveal other juniors had remained engaged and also regularized in service if there were no work or funds when break in service had been given to petitioner certain juniors to petitioner could not have been retained and regularized and thus it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established that in order to escape liability, plea of forestry work being seasonal in nature had been set up by respondent. It is nowhere in evidence of respondent that forest department has been declared as seasonal work as required under the law.

13. It is settled principle of law that plea of 'abandonment' has to prove like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman. Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. It has also come in the evidence that muster roll had not been issued for whole month in a year. Even in some months/years even muster-rolls were not at all issued. No muster-roll was issued as petitioner in year 2001 and 2002 showing to have not given any work however it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua non-attendance and as such the case of petitioner giving fictional breaks cannot be disbelieved. The plea of respondent that forestry is seasonal work gets negative from cross-examination of RW1 in which he has admitted that no notification to this effect had been issued by govt. Even RW1 has admitted that 39 workers who regular had been given work of plantation and nursery. That being so, it could not be stated that time to time break was attributable to non-availability of funds and work. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service given to petitioner by respondent from 1997 onwards which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of "continuous service" envisaged under Section 25-F of the Act.

15. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and allowed to complete 240 days as is evident from Ex. PW1/B and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that one Shyam Singh was junior to respondent who was retained in service leading to inference that while retrenching petitioner, junior workman was allowed to be retained in service which showed arbitrary and whimsical manner in which petitioner was disengaged ignoring his seniority. As Shyam Singh is admittedly junior to the petitioner per contents of Ex. RW1/F which is the letter of Conservator of Forest for appointment of Shyam Singh and that the RW1 Shri Rajeev Kumar on oath has also admitted this fact and as such principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent while giving intermittent breaks to petitioner. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419.** That being so, the relief sought for by petitioner is liable as respondent is held to have violated provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as well as non-availability of work and funds besides forestry being seasonal work as stated above. It is accordingly held that respondent had given fictional breaks from time to time to the petitioner which is illegal and unjustified as has come in the evidence. In so far having remained unemployed during intermittent break period petitioner himself has not discharged initial onus qua remaining unemployed during break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issues no.1 and 2 are decided accordingly.

Issue No. 3

16. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster-roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be

stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

Relief:

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of March, 2018.

Sd/-
(K.K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 230/2016
Date of Institution : 21-04-2016
Date of Decision : 23-03-2018

Shri Sanjay Kumar s/o Shri Devia Ram, r/o Village Angari, P.O. Preena, Tehsil and Distt. Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Bharmour, Distt. Chamba, H.P ..*Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Shri Sanjay Kumar s/o Shri Devia Ram, r/o Village Angari, P.O. Preena, Tehsil and District Chamba, H.P. during February, 2003 by the Executive Engineer, H.P.P.W.D. Division Bharmour, District Chamba, H.P., who had worked as beldar on daily wages for 49½ days during year, 2002 and 25 days during year, 2003 respectively and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30-05-2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 49 ½ days during year, 2002 and 25 days during year, 2003 respectively and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that claimant/petitioner had been engaged as daily wage beldar in the year 1999 in Rakh Division HPPWD Rakh where he continuously worked till 2003. It is alleged that on final termination by the respondent in 2003, petitioner had approached the Hon'ble Administrative Tribunal for his disengagement as well as notional breaks given to him from time to time when in O.A. (D) No.74/2003 Hon'ble Administrative Tribunal directed respondent to engage claimant as and when the work and funds were available in accordance with seniority. It further transpires from petition that claimant had been given notional break from 1999 to 2003 by the respondent with the object not letting him complete 240 days for the purpose of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). It is alleged that in pursuance to direction so passed by Hon'ble Administrative Tribunal petitioner had submitted copy of order of Hon'ble Administrative Tribunal *vide* his letter dated 28-7-2003 for compliance and thereafter petitioner claims to have been engaged in March, 2004 but his service was again terminated without any prior notice. The grievance of petitioner remains that some junior persons namely Kaniya, Smt. Nikko Devi, Sarwan, and Smt. Kamla had been engaged in the year 2000 on daily waged basis as beldar and thereafter these workmen had continuously worked for more than 240 days from their initial date of appointment. It is alleged that service of petitioner had been engaged and disengaged by the department several times with malafide intention and that notional breaks had been given and while doing so respondent did not follow principle of 'Last come First go' despite availability of funds and work. It is alleged that by not implementing the order of Hon'ble Administrative Tribunal, H.P. Shimla respondent/department has committed violation of Section 29 of the Act which is read with Section 32 of the said Act. It is alleged that after disengagement of petitioner, Smt. Puni w/o Prithu, Smt. Sheetla w/o Man Singh, Rajinder Singh s/o Chandu, Mahinder s/o Gurdhian and Rajinder s/o Dishu had been appointed in Sub-Division Rakh but claimant was not given an opportunity of re-employment which violated Section 25-H of the Act. It is claimed that petitioner had timely approached department for his engagement and notional breaks but no action was taken by the respondent. It is claimed that petitioner had raised industrial dispute *qua* his illegal termination and matter was listed for conciliation before Labour Officer-*cum*-Conciliation Officer, Chamba who submitted report 12 (4) of the Act to Labour Commissioner, Shimla who declined to make reference. In pursuance to that petitioner filed CWP No.146/2016 before the Hon'ble High Court of H.P. which was allowed on 22-2-2016 direction to HPPWD/respondent to refer the dispute to Labour Court. Alleging action of respondent to retrenchment of petitioner being highly unjustified,

illegal and in violation of mandatory provisions of the Act. The petitioner has thus prayed for his reinstatement in service with full back wages in continuity of service with seniority from his initial date of engagement till the date of reinstatement.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wage beldar in November, 1999 who continued to work upto February, 2003 but had not completed 240 days in any calendar year and thereafter did not fulfill the condition envisaged under Section 25-B of the Act and as such no notice under Section 25-F of the Act was required to be served or served upon the petitioner. It has been emphatically denied that any notional breaks have been deliberately given rather service of petitioner was never terminated by respondent in the year 2003 rather petitioner of his own sweet will had left the job in February, 2003 who did not approach the respondent/department but petitioner had filed O.A. (D) no.74/2003 before the Hon'ble Administrative Tribunal, Shimla *vide* order dated 27-6-2003 respondent had been directed to re-engage the petitioner as and when the work and funds were available however denied that petitioner had submitted copy of order *vide* letter dated 28-7-2003 and had approached for reinstatement in pursuance to order passed by the Hon'ble Administrative Tribunal. In so far as Kanhaya s/o Finfu, Smt. Nikko Devi w/o Desh Raj and Sarwan s/o Byaja are concerned, they are stated to have never worked with the respondent however Kamla Devi d/o Hans was engaged by respondent/department under died and harness policy of the govt. besides Kamla Devi was senior to petitioner. It is categorically stipulated that no junior to petitioner had been retained by respondent which violated Section 25-G of the Act. Similarly, Smt. Puni Devi w/o Prithu, Smt. Sheela w/o Man Singh, Rajinder Singh s/o Chandu, Mahinder s/o Gurdhian and Rajinder s/o Dishu had been engaged by the department as per government policy of died and harness scheme and as such even showing of above named persons did not attract violation of Section 25-H of the Act as Sheela, Rajinder Singh, Mahinder Singh, Rajinder Singh s/o Dishu had been engaged on compassionate grounds in which no notice was required to be given. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and further asserted that persons namely Mahinder s/o Moti, r/o Village Badohar, P.O. Puira, Tehsil & District Chamba and Vijay s/o Panju Ram, r/o Village Gadhaun, P.O. Rasi, Tehsil & District Chamba under Sub-Division Rakh Division Bharmour had been appointed afresh.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, HPPWD Division Bharmour, District Chamba as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of letter dated 4-10-2007, 17-10-2008, 28-01-2009 Ex. RW1/C to Ex. RW1/E respectively, copy of mandays of workers Ex. RW1/F and closed evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 24-10-2017 for determination which are as under:—

(1) Whether termination of services of the petitioner by the respondent during Feb., 2003 is/was improper and unjustified as alleged? . .*OPP*

(2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP*

(3) Whether the claim petition is not maintainable in the present form? . .*OPR*

(4) Whether the claim petition is bad on account of delay and laches as alleged? . .OPR

(5) Relief :

9. For the reasons detailed hereunder, my findings on the above issues are as follows:

Issue No. 1 : No
Issue No. 2 : No
Issue No. 3 : No
Issue No. 4 : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1 *And* 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that there is no *iota* of evidence on record establishing that petitioner to have worked for 240 days preceding his date of termination by the respondent. It is relevant to refer to mandays chart Ex. RW1/B which shows that petitioner had worked for merely 25 days in the year 2003 whereas in the year 2002 he had worked for 49 ½ days. This fact further finds support from Reference No. 230/2016 received from Labour Commissioner, Shimla. In the witness box as PW1 petitioner has claimed to have worked for 240 days as required for the applicability of Section 25-F of the Act but the testimony of petitioner no corroborated any documentary evidence on record at the most petitioner is held to have worked for 49 ½ days and 25 days in the years 2002 and 2003 respectively. That being so, there could be no violation of Section 25-F of the Act as respondent was not required to issue any notice or pay compensation of one month's salary in lieu thereof under Section 25-F of the Act. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2003. No reason whatsoever has been assigned for such any inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 240 days of work as required and also for applicability of Section 25-B of the Act. Since respondent had failed to establish that any departmental inquiry was initiated *qua* non attendance of petitioner or that any charge-sheet was raised and at the same time no notice was served upon petitioner, it would be unsafe to hold that petitioner had abandoned the job as contended by the respondent. However, petitioner has failed to establish that he had worked for more than 240 days preceding his termination in 12 calendar months in a year. Accordingly, in view of foregoing, it is held that respondent has not violated Section 25-F of the Act.

12. In so far as violation of Section 25-G is concerned, suffice would be to state here that there is no junior to petitioner who had been engaged by respondent except those who had been

appointed as harness cases. A bare glance at year-wise details of regular staff in respect of Rakh Sub-Division HP, PWD Rakh Division Bharmour would establishment that as Ex. RW1/F Kamla Devi, Punni Devi, Sheela Devi, Mohinder Singh, Rajinder Kumar s/o Chandu and Rajinder Kumar s/o Dishu had been engaged as beldar who are shown to have worked till 2016. With the aid of such documentary evidence on record, petitioner has contended that the above-named officials had joined in the year 1999, 2004, 2007, 2008 and 2009 respectively and as such by engaging these workers respondent had violated Section 25-G of the Act.

13. To appreciate controversy in issue that relevant referred to letters Ex. RW1/C to Ex. RW1/E concerning engagement of Smt. Sheela, Rajinder s/o Chando, Mohinder Kumar which showed that these workmen had been ordered to be appointed by Executive Engineer, Bharmour Division on compassionate ground subject to certain condition which showed that these workmen appointed on compassionate grounds were required to support the family on deceased worker and even any complaint against such newly appointed workmen on compassionate ground shall be liable to be disengaged. Be it stated that as per the policy of the government for appointment of compassionate ground, the very idea behind the policy was that person appointed in succession of deceased workers who would be certainly senior in service unless contrary is proved. In case in hand, there is no *iota* of evidence that the persons who had been appointed as harness case were successor of persons mentioned were not senior to petitioner in service. Otherwise also, from cross-examination of RW1 Shri Inder Singh Uttam, Executive Engineer, it is evident that Ld. counsel for petitioner had asked this witness that as per Ex. RW1/G from serial No.1 to 6 had been engaged after the petitioner on compassionate ground. As such, the petitioner cannot derive any benefit for engagement of several workmen as reflected in Ex. RW1/F to be appointed later as there exists specific policy of the H.P. Government for engaged in the event of death of a workman and all the workmen referred have been engaged on compassionate grounds. In another question asked to RW1, it has been admitted by RW1 that Vijay Singh and Manohar Lal were working with him. Be it stated that Manohar Lal had been appointed as per court order but for Vijay Singh there is no evidence led by petitioner that he was junior to petitioner. Not only this, petitioner also omitted to produce any seniority list by which it can be stated that Vijay Singh who was engaged was junior to petitioner. Thus in the absence of any valid and reliable evidence for engagement of any junior as claimed by the petitioner, it would be unsafe to hold that respondent had violated Section 25-G of the Act. It has rightly been argued that for applicability of Section 25-G, it is not necessary that claimant/petitioner should have worked for 240 days as has been held in case titled as **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419.** At the same time petitioner was not absolved from his accountability to lead cogent and convincing evidence on the point of engagement of juniors to petitioner. In such like situation, this court left with no option but to hold that petitioner has failed to establish violation of Section 25-G of the Act. For similar reason provisions of Section 25-H of the Act would also be attracted as there is no evidence of engagement of junior as discussed above and as such, respondent was not required to issue any notice while re-employing above named persons as mentioned in foregoing paras. Accordingly, petitioner has also failed to prove violation of Section 25-H of the Act. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'.** Applying the ratio of judgment of 2007 *(supra*) to this case it is held that as petitioner was earning from his agricultural and manual pursuits, the petitioner had sufficient to maintain him and his

family. As such, it is held that petitioner was gainfully employed after his termination by respondent. Issues no.1 and 2 are decided in negative against petitioner and in favour of respondent.

Issue No. 3 :

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras respondent having failed to establish plea of abandonment by respondent, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4:

15. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903). In Divisional Manager, HPFC & another** vs**. Garibu Ram, Latest HLJ 2007 (HP) 1160,** the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram** vs. **State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand** vs. **Union of India, CWP No. 812 of 2000,** there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager** vs. **Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar** vs. **HPSEB and anr. 2008 (1) SLJ (H.P.) 425,** it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd.** vs. **Gopal Bhiva & Ors, AIR 1964 SC 752,** has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82,** it has been observed by the Hon"ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the *vice* of delays and laches as alleged by the respondent. Hence, this issue No.4 is decided in negative against the respondent and in favour of petitioner.

Relief:

17. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is dismissed. Leaving the parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of March, 2018.

Sd/-
(K.K. SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 81/2016
Date of Institution : 20-02-2016
Date of Decision : 24-03-2018

Shri Narayan Singh s/o Shri Ali Ram, r/o Village Takwas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ...*Petitioner*

Versus

The Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. ...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dharam Malhotra, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether termination of services of Shri Narayan Singh s/o Shri Ali Ram, r/o Village Takwas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of more than 7 years in raising the industrial

dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as beldar in the month of July, 1995 at HPPWD Sub-Division Shor, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P. by the respondent where the petitioner continued to work uninterruptedly till September, 2004 when his service had been orally terminated without any notice or any reason. It is alleged that despite several requests, petitioner had not been engaged however respondent No.1 and his officials assured to petitioner from time to time that he would be reengaged when work and funds were available with the respondent and petitioner being illiterate and hailing from remote area believed respondent's officials and finally respondent refused to engage the petitioner in the first week of October, 2010. Averments made in the claim petition further revealed that persons junior to petitioner had been retained and consequentially regularized besides when petitioner realized that respondent was not going to re-engage him in service, a demand notice in April, 2012 was served followed by conciliation proceedings and failure of such proceedings which did not yield any positive result as Labour Commissioner, Shimla refused to make reference to Labour Court in pursuance to which CWP No.3884/2015 was filed before the Hon'ble High Court *vide* which Labour Commissioner was directed to make reference to this court. It is claimed that petitioner had completed more than 160 days continuously preceding 12 calendar months in the tribal area of Panig and that petitioner was entitled to reinstatement with all consequential benefits. It is also alleged that respondent did not adhere to mandate of Section 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter called "the Act" for brevity) juniors were retained and petitioner had been disengaged in violation of Section 25-G of the Act and petitioner had not been offered for reemployment when other junior were engaged. Accordingly, petitioner prayed that the respondent be directed to re-engage the petitioner as beldar with continuity in service, back wages and consequential benefits. It has further been prayed that service of petitioner be regularized from the date of engagement till completion of 8 years of continuous service on the respective post of beldar in regular pay scale and consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability and delay and laches. On merits admitted that petitioner had been engaged as daily wager in the year 1994 who continued to work intermittently upto 2004 and left the job at his own will and did not return back to join for duty. It is claimed that petitioner had not completed 160 days in preceding 12 months which is required to be established for tribal area for Pangi for the purpose of counting of service of one year and even in each calendar year, petitioner had not completed 160 days. It is asserted that service of petitioner had not been terminated by respondent but he left the job at his own will. It has been emphatically denied that no artificial breaks had been given so that petitioner get benefits of Section 25- B of the Act. It is admitted that petitioner served demand notice in April, 2012. Accordingly petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. It is claimed that persons namely Gautam s/o Gian Chand was engaged on 7-9-2007, Dev Raj s/o Mehar Chand on 20-7-2007, Sham Lal s/o Salag Ram on 2-6-2006 in HPPWD Killar Division but petitioner was not served any notice. It is contended that petitioner had not abandoned the job rather his service had been terminated by respondent.

6. In order to prove his case, petitioner had examined himself as PW1 by way of examination-in-chief and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD

Division Killar as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05-12-2016 for determination which are as under:

(1) Whether termination of services of the petitioner by respondent during September, 2004 is/was improper and unjustified as alleged? ...*OPP.*

(2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

(3) Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

(4) Whether the claim petition is bad on account of delay and laches as alleged? If so, its effect? ...*OPR.*

(5) Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

*Issue No.*1 : No

Issue No.2 : No

*Issue No.*3 : No

*Issue No.*4 : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1 *And* 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, petitioner was remained engaged as beldar from May, 1994 till September, 2004 which corresponds with mandays chart Ex. RW1/B. A bare glance on the mandays chart aforestated would show that except that a year 1994 petitioner had worked less than 160 days. In the witness box as PW1 while deposing by way of examination-in-chief petitioner has maintained that his service had been terminated orally in September, 2004. He has also maintained in examination-in-chief that respondent had asked to engage him in service in October, 2010 but he was refused to be re-ngaged by the respondent. Admittedly, respondent at no point of time had issued any notice whenever petitioner left the work and he was not served any charge-sheet for his misconduct of absence from duty.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex.

RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue.

13. RW1 has asserted in his affidavit Ex. RW1/A that petitioner used to come of his own and left the job but at no point of time he had been given any notice. In affidavit RW1 Shri D.R. Chauhan, Executive Engineer has maintained that petitioner had not completed 160 days and it was required to be established by him for applicability of Section 25-F of the Act which required respondent issuance of notice prior to termination as well as salary of one month's in lieu of notice but in absence of reliable evidence *qua* abandonment as set up in reply by the respondent, this court is left with no option but to conclude that petitioner had not factually abandoned the job. A bare glance at mandays chart also established that in the year 2003 petitioner had worked from June and thereafter as shown in mandays Chart Ex. RW1/B in September 2004 when he worked for 100 days. Similarly, in preceding year 2003, petitioner had merely worked for 132 days and had worked in the months of March, June, July, August & September. If petitioner had worked in September, 2004 when he was terminated certainly in preceding 12 months, he had not worked for 160 days as in the preceding 8 months there was no work as shown in the mandays chart. As such, it would be unsafe to hold that petitioner had worked for 160 days and the provisions of Section 25-B of the Act were applicable and thus there was no requirement of issuance of notice to petitioner by the respondent under Section 25-F of the Act. Accordingly, it is held that respondent has not violated Section 25-F of Industrial Disputes Act.

14. In so far as violation of provisions of Section 25-G and 25-H of the Act are concerned, suffice would be to state here that petitioner has not led evidence establishing that workers junior to petitioner had been retained and his services were disengaged so as to prove violation of procedure of retrenchment envisaged under Section 25-G of the Act. It has rightly been contended by Ld. Dy. D.A. for respondent that to prove such violation petitioner was required to prove on record the seniority list. Although in rejoinder, petitioner has mentioned names of three workmen who joined in years 2006 and 2007 respectively but this fact could have been proved by best evidence which has been withheld *i.e.* seniority list as petitioner has rendered service for about 10 years intermittently preceding his termination in September, 2004. Similarly, violation of Section 25-H of the Act could be proved by bringing in evidence seniority list while engaging junior persons while disengaged, it could not be stated that respondent had violated either Section 25-G or 25-H of the Act. For the aforesaid reasons, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act while terminating service of petitioner in September, 2004 and retaining or re-engaging juniors while terminating service of petitioner. Accordingly issue No.1 is answered in negative and issue no.2 also to be answered negative as termination of petitioner from service by the respondent is held to be proper and justified and for similar reasons, petitioner would not be entitled to any consequential benefits as claimed by him. Accordingly both these issues are answered in negative against petitioner and in favour of respondent.

Issue No.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and

evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

*Issue No.*4

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In Divisional Manager, HPFC & another *vs*. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. In Ramesh Chand *vs*. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as Divisional Manager *vs.* Mohinder Kumar, there was a delay of 14 years. In Naginder Kumar *vs.* HPSEB and anr. 2008 (1) SLJ (H.P.) 425, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the Bombay Gas Co. Ltd. *vs.* Gopal Bhiva & Ors, AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82,** it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the *vice* of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of March, 2018.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 85/2016
Date of Institution : 20-02-2016
Date of Decision : 26-03-2018

Smt. Sheela w/o Shri Chain Singh, r/o Village Karoti, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D./ I.&P.H., Killar (Pangi) District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Smt. Sheela w/o Shri Chain Singh, r/o Village Karoti, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated nil received in the Labour Office Chamba on 22-11-2011 regarding her alleged illegal termination of service during June, 2004 suffers from delay and latches? If not, whether termination of services of Smt. Sheela w/o Shri Chain Singh, r/o Village Karoti, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P. during June, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year

1997 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had re-engaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2004. She further prayed for reinstatement in service *w.e.f.* year 2004 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1988 to 2004 be counted 160 days continuous service and regularization of the services of petitioner under 8 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also

contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice, Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers closed the evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19-12-2016 for determination:

(1) Whether the industrial dispute raised by petitioner *vide* demand notice dated nil qua her termination of service during June, 2004 by respondent suffers from the *vice* of delay and laches as alleged?If so, its effect? ...*OPP.*

(2) Whether termination of the services of petitioner by the respondent during June, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

(3) If issue No.1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

(4) Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

(5) Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.*1 : Discussed

*Issue No.*2 : Yes

*Issue No.*3 : Discussed

*Issue No.*4 : No

Relief : Petition is partly allowed awarding lump sum compensation of Rs.70,000/- per operative part of award.

REASONS FOR FINDINGS

*Issues No.*1 *to* 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1997 continuously worked till June, 2004 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1997 till June, 2004 whereas the claimant/petitioner alleges that she had worked from 1997 to October, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1997 to June, 2004 and not upto October, 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 to June, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in June, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically

admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 116 days in the year 1997, 46 days in 1998, 64 days in 2000, 47 days in 2001, 86 days in 2002, 71 days in 2003 and 28.5 days in 2004 and thus a total of her service in 1997 to 2004 in 7 years she had worked for 458 ½ days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 28.5 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after June, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of Central Bank of India *vs.* S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/D the order dated 21-9-2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and

several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in June, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation *vs.* M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** Vs. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-Operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to** supra**. The award passed by the Labour Court** was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** Vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160,** delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** Vs. **Sirhind Co-operative Marketing-*cum*-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial

discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service-**Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but **that has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase *vs.* Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh *v.* Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as State of Himachal Pradesh and **another** vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize &**

Company Ltd. vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years.** The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 07 years and actually worked for 458½ days as per mandays chart on record and that the services of petitioner were disengaged in June, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** *i.e*. demand notice was given on 22-11-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC).** The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** *v.* **Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (**2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate

unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No. 4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2018.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 75/2016
Date of Institution : 20-02-2016
Date of Decision : 26-03-2018

Smt. Amar Dei w/o Shri Des Raj, r/o V.P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D, Killar (Pangi) District Chamba, H.P. ....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Smt. Amar Dei w/o Shri Des Raj, r/o V.P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), Distrcit Chamba, H.P. *vide* demand notice dated 19-12-2011 regarding her alleged illegal termination of services during September, 2004 suffers from delay and laches? If not, whether termination of services of Smt. Amar Dei w/o Shri Des Raj, r/o V.P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), Distrcit Chamba, H.P. during September, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1992 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/ artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/

department had re-engaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/ retrenchment of respondent in the year 2004. She further prayed for reinstatement in service *w.e.f.* year 2004 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1992 to 1998 be counted 160 days continuous service and regularization of the services of petitioner under 8 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1992 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/ proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex.

PW1/B, copy of demand notice, Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19-12-2016 for determination:

(1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 19-12-2011 *qua* her termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

(2) Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

(3) If issue No.1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? …*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

(5) Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	Discussed
Issue No. 2	:	Yes
Issue No. 3	:	Discussed
Issue No. 4	:	No
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs.1,60,000/- per operative part of award.

Issues No. 1 *to* 3

REASONS FOR FINDINGS

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1992 continuously worked till September, 2004 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work

intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1992 to September, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima *facie belies* the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 56 days in the year 1992, 51 days in 1994, 144.5 days in 1995, 164 days in 1996, 134 days in 1997, 159 days in 1998, 77 days in 1999, 150 days in 2000, 123 days in 2001, 150 days in 2002, 150 days in 2003 and 108 days in 2004 and thus a total of her service in 1992 to 2004 in 12 years she had worked for 1410½ days in her entire service period. Be it noticed that petitioner

had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 108 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1992 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/D the order dated 21-9-2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as

well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *Vs.* Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh *Vs.* The Sirhind Co-Operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there

was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs**. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an**

important circumstances which the Labour Court must keep in view before granting relief".

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 (3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without

following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon"ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 12 years and actually worked for 1410½ days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** *i.e.* demand notice was given on 19-12-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 1,60,000/- (Rupees one lakh sixty thousand only) would be an appropriate relief to which the petitioner is

entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No. 4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,60,000/- (Rupees one lakh sixty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 77/2016
Date of Institution : 20-02-2016
Date of Decision : 26-03-2018

Shri Ajeet Kumar s/o Shri Babu Ram, r/o Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

The Executive Engineer, Killar Division, I.&P.H./ H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O. P. Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Shri Ajeet Kumar s/o Shri Babu Ram, r/o Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 2-1-2012 regarding his alleged illegal termination of service during August, 2004 suffers from delay and latches ? If not, whether termination of the services of Shri Ajeet Kumar s/o Shri Babu Ram, r/o Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during August, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified ? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employe"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1999 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Prakash Chand who appointed in 2001, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/ petitioner claimed that he had spotless service record who never been charge-sheeted for any

act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. He further prayed for reinstatement in service w.e.f. month of October, 2005 along- with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1999 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2008 having completed 8 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and latahes. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1999 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of „Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B. K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05-12-2016 for determination:

(1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 2-1-2012 *qua* his termination of service during August, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? …*OPP.*

(2) Whether termination of services of petitioner by the respondent during August, 2004 is/was improper and unjustified as alleged? …*OPP.*

(3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? …*OPP.*

(4) Whether the claim petition is not maintainable in the present form? …*OPR.*

(5) Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	:	Discussed
Issue No. 2	:	Yes
Issue No. 3	:	Discussed
Issue No. 4	:	No
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 *to* 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1999 till August, 2004 whereas the claimant/petitioner alleges that he had worked from 1999 to

October, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged upto August, 2004 and not in October, 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1999 to August, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 78 days in the year 1999, 150 days in 2000, 103 days in 2001, 77 days in 2002, 118

days in 2003 and 97 days in 2004 and thus a total of his service in 1999 to 2004 in 06 years he had worked for 623 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 97 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1999 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement of junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. counsel for petitioner relied upon Ex. PW1/D the order dated 24-12-2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 06 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in August, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivaable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-

examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> **13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a

delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation o section 25-F of the I. D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F- Termination of service-**Industrial dispute raised after six years- Limitation Act not applicable to**

reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of

company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 623 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 2.1.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is

entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No. 4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2018.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	:	66/2016
Date of Institution	:	20-02-2016
Date of Decision	:	26-03-2018

Smt. Chandro d/o Shri Lala Ram, r/o Village Balwas, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. …*Petitioner.*

Versus

The Executive Engineer, Killar Division, I. & P. H./ H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O. P. Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Smt. Chandro d/o Shri Lala Ram, r/o Village Balwas, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 19-12-2011 regarding her alleged illegal termination of service during October, 1999 suffers from delay and laches? If not, whether terminaition of the service of Smt. Chandro d/o Shri Lala Ram, r/o Village Balwas, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. during October, 1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1990 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/ department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Gurdev who appointed in 1994, Man Dei in 1994, Sher Singh in 1996, Balwant in 1996, Dilar Ram in 1996, Tek Chand in 1998, Bhag Dei in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that she had spotless service record who never

been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. She further prayed for reinstatement in service *w.e.f.* month of October, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1990 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2001 having completed 10 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1992 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1999 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice dated Ex. PW1/C, copy of order of Hon'ble High Court Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B. K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05-12-2016 for determination:

(1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 19-12-2011 *qua* her termination of service during October, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

(2) Whether termination of services of petitioner by the respondent during October, 1999 is/was improper and unjustified as alleged? …*OPP.*

(3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? …*OPP.*

(4) Whether the claim petition is not maintainable in the present form? ...*OPR.*

(5) Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	:	Discussed
Issue No. 2	:	Yes
Issue No. 3	:	Discussed
Issue No. 4	:	No
Relief.	:	Petition is partly allowed awarding lump sum compensation of Rs. 80,000/- per operative part of award.

Issues No. 1 to 3

REASONS FOR FINDINGS

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1992 till October, 1999 whereas the claimant/petitioner alleges that she had worked from 1990 to October, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1992 to 1999 and not from 1990 to 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but

only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1990 to October, 2004. She has also stated on oath that no notice under Section 25- F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 30 days in the year 1992, 64 days in 1994, 144.5 days in 1995, 80 days in 1996, 179.5 days in 1997, 141 days in 1998 and 135 days in 1999 and thus a total of her service in 1992 to 1999 in 07 years she had worked for 744 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only

with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 135 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 1999 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1992 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. counsel for petitioner relied upon Ex. PW1/D the order dated 24-12-2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 07 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in October, 1999, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of

Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the for going discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> **13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that

there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calendar year and her termination was in violation o section 25-F of the I.D.Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an**

important circumstances which the Labour Court must keep in view before granting relief'.

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don"t come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner

without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 07 years and actually worked for 744 days as per mandays chart on record and that the services of petitioner were disengaged in October, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years** *i.e.* demand notice was given on 19-12-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon"ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 80,000/- (Rupees eighty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts

and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No. 4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 80,000/- (Rupees eighty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2018.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No.	:	539/2016
Date of Institution	:	23-08-2016
Date of Decision	:	27-03-2018

Shri Ram Singh s/o Shri Maya Dass, r/o Village Mahalyat, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Sh. Ram Singh s/o Sh. Maya Dass, Village Mahalyat P.O. Killar, Tehsil Pangi, Distt. Chamba, H.P. during November, 1996 by the Executive Engineer, HPPWD Division, Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 226 days during the years 1995 and 1996 and has raised industrial dispute *vide* demand notice dated Nil (received in the office of Labour Officer Chamba on 9-6-2015) after more than 18 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the years mentioned as above and delay of more than 18 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had re-engaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to

petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2004. He further prayed for reinstatement in service *w.e.f.* year 2004 alongwith back wages, seniority including continuity in service as petitioner as he had remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1994 to 2004 be counted 160 days continuous service and regularization of the services of petitioner under 8 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 1996 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1996 he would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/ proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers closed the evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 14-11-2017 for determination:

(1) Whether termination of services of the petitioner by the respondent during Nov., 1996 is/was improper and unjustified as alleged? ..*OPP.*

(2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP.*

(3) Whether the claim petition is not maintainable in the present form? ...*OPR.*

(4) Whether the claim petition is bad on account of delay and laches as alleged? ...*OPR.*

(5) Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs. 25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 *and* 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till October, 2004 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1994 till November, 1996 whereas the claimant/petitioner alleges that he had worked from 1994 to 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1995 to November, 1996 and not from 1994 to 2004. Admittedly, the reference of

appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in the year 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after November, 1996. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 87½ days in the year 1995 and 139 days in 1996 and thus a total of his service in 1995 to 1996 in 02 years he had worked for 226½ days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only

with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1996 the petitioner had merely worked for 139 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after November, 1996 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. Thus, plea that persons were directed to be appointed in pursuance to awards were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in November, 1996, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment**

wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10 (1) (c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
>
> **14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows—
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the

appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-operative Marketing-cum- Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by**

the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1996 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing- cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5-Industrial dispute- Termination of service-Finding of Labour Court that workman had completed 240 days in calander year and his termination was in violation of section 25-F of the I. D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. His services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 226½ days as per mandays chart on record and that the services of petitioner were disengaged in November, 1996 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eighteen years** *i.e.* demand notice was given on 9-6-2015. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

Issue No. 3

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of March, 2018.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 219/2016
Date of Institution : 11-04-2016
Date of Decision : 27-03-2018

Smt. Pan Dei w/o Shri Sham Singh, r/o Village and Post Office Kothi, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Smt. Pan Dei w/o Shri Sham Singh, r/o Village and Post Office Kothi, Tehsil Pangi, District Chamba, H.P. during September, 2004 by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages and has raised her industrial dispute after about 7 years *vide* demand notice dated-nil-received on 31-10-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay and about 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1995 who continuously worked till October, 2003 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/ department had re-engaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial

Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/ retrenchment of respondent in the year 2003. She further prayed for reinstatement in service *w.e.f.* year 2003 alongwith back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1985 to 2003 be counted 160 days continuous service and regularization of the services of petitioner under 8 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B. K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers closed the evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 14-11-2017 for determination:

(1) Whether termination of services of the petitioner by the respondent during Sept. 2004 is/was improper and unjustified as alleged? ..*OPP.*

(2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the claim petition is not maintainable in the present form? ..*OPR.*

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

(5) *Relief.*

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

*Issue No.*1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : No

Relief : Petition is partly allowed awarding lump sum compensation of Rs.1,00,000/- per operative part of award.

Issues No.1 *to* 3

REASONS FOR FINDINGS

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1995 continuously worked till October, 2003 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1998 till September, 2004 whereas the claimant/petitioner alleges that she had worked from 1995 to October, 2003. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1998 to September, 2004 and not from 1995 to October, 2003. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and re-affirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to

have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1998 to September, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 151.5 days in the year 1998, 122 days in 1999, 137.5 days in 2000, 140.5 days in 2001, 143 days in 2002, 59 days in 2003 and 104 days in 2004 and thus a total of her service in 1998 to 2004 in 07 years she had worked for 857½ days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 104 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. Thus, plea that persons were directed to be appointed in pursuance to awards were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely

because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer".
>
> **13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
>
> **14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows—
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if

it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the

power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation o section 25-F of the I. D. Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to

discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to

keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 07 years and actually worked for 857½ days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** *i.e.* demand notice was given on 30-10-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright.

Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of March, 2018.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 542/2016
Date of Institution : 23-08-2016
Date of Decision : 27-03-2018

Smt. Man Dei w/o Shri Ram Singh, r/o Village Mahalyat, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Smt. Man Dei w/o Sh. Ram Singh, Village Mahalyat, P.O. Killar, Tehsil Pangi Distt. Chamba, H.P. during 11/1996 by the Executive Engineer, HPPWD Division, Killar (Pangi) Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 210 days during the year 1995 to 1996 and has raised his industrial dispute *vide* demand notice dated Nil (received in the office of Labour Officer Chamba on 9-6-2015) after more than 18 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the years mentioned as above and delay of more than 18 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/ department had re-engaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/ retrenchment of respondent in the year 2004. She further prayed for reinstatement in service *w.e.f.* year 2004 alongwith back wages, seniority including continuity in service as petitioner as

she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1994 to 2004 be counted 160 days continuous service and regularization of the services of petitioner under 8 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 1996 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1996 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers closed the evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 14-11-2017 for determination:

(1) Whether termination of services of the petitioner by the respondent during Nov., 1996 is/was improper and unjustified as alleged? ..*OPP.*

(2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the claim petition is not maintainable in the present form? ..*OPR.*

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief ..*OPR.*

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Petition is partly allowed awarding lump sum compensation of Rs. 25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 *to* 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till October, 2004 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1995 till November, 1996 whereas the claimant/petitioner alleges that she had worked from 1994 to October, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1995 to November 1996 and not from 1994 to October, 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1994 to 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service

and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in the year 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/ department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after November, 1996. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 69 days in the year 1995 and 141 days in 1996 and thus a total of her service in 1995 to 1996 in 02 years she had worked for 210 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1996 the petitioner had merely worked for 141 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was

terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after November, 1996 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. Thus, plea that persons were directed to be appointed in pursuance to awards were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in November, 1996, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of

workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
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> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
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> **14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows—
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> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the

industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost

important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1996 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years wa condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing- cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963-Section 5- Industrial dispute- Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
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> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. counsel for claimant/ petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be**

supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation. Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court

in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 210 days as per mandays chart on record and that the services of petitioner were disengaged in November, 1996 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eighteen years** *i.e.* demand notice was given on 9-6-2015. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon"ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of March, 2018.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 69/2016
Date of Institution : 20-02-2016
Date of Decision : 27-03-2018

Smt. Mandai w/o Shri Des Raj, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, Killar Division H.P.P.W.D. Killar (Pangi) District Chamba, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Smt. Mandai w/o Shri Des Raj, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive

Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 21-12-2011 regarding her alleged illegal termination of services during November, 1996 suffers from delay and laches? If not, whether termination of services of Smt. Mandai w/o Shri Des Raj, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. during November, 1996, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1991 who continuously worked till October, 1996 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/ artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/ department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 1996 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 1996. She further prayed for reinstatement in service *w.e.f.* year 1996 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1991 to 1996 be counted 160 days continuous service and regularization of the services of petitioner under 8 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 1996 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1996 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of „Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/ proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers closed the evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 14-11-2017 for determination:

(1) Whether the industrial dispute raised by petitioner vide demand notice dated 21-12-2011 qua her termination of service during Nov., 1996 by respondent suffers from the vice of delay and laches as alleged? ..*OPP.*

(2) Whether termination of the services of petitioner by the respondent during Nov., 1996 is/was illegal and unjustified as alleged? ..*OPP.*

(3) If issue no.1 or issue no.2 are proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

(4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

(5) Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1	: Discussed
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of Rs. 20,000/- per operative part of award.

Issues No. 1 *to* 3

REASONS FOR FINDINGS

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1991 continuously worked till October, 1996 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1994 till November, 1996 whereas the claimant/petitioner alleges that she had worked from 1991 to October, 1996. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1994 to November, 1996 and not from 1991 to October, 1996. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to 1996. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in the year 1996 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this

Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after November, 1996. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 55 days in the year 1994, 04 days in 1995 and 127½ days in 1996 and thus a total of her service in 1994 to 1996 in 03 years she had worked for 186½ days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1996 the petitioner had merely worked for 127½ days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after November, 1996 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No.10 of the affidavit were

retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. Thus, plea that persons were directed to be appointed in pursuance to awards were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in November, 1996, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court

titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer".

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *vs.* Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for

adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh *vs.* The Sirhind Co-Operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1996 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even

longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-*cum*-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963-Section 5- Industrial dispute- Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Re-instatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of re-instatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of re-instatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the re-instatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 *supra*) even if not met requirement,

cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 186½ days as per mandays chart on record and that the services of petitioner

were disengaged in November, 1996 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **sixteen years** *i.e.* demand notice was given on 21-12-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

Issue No. 4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of March, 2018.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 220/2016
Date of Institution : 11-04-2016
Date of Decision : 27-03-2018

Shri Hari Singh s/o Shri Mahesh Chand, r/o Village and Post Office Kothi, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Shri Hari Singh s/o Shri Mahesh Chand, r/o Village and Post Office Kothi, Tehsil Pangi, District Chamba, H.P. during September, 2005 by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages basis and has raised his industrial dispute after about 6 years *vide* demand notice dated-nil-received on 31-10-2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of about 6 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1997 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had re-engaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/ retrenchment of respondent in the year 2005. He further prayed for reinstatement in service *w.e.f.* year 2005 along-with back wages, seniority including continuity in service as petitioner as he had remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1987 to 2005 be counted 160 days continuous service and regularization of the services of petitioner under 8 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the

job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2005 he would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers closed the evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 14-11-2017 for determination:

(1) Whether termination of services of the petitioner by the respondent during September, 2005 is/was improper and unjustified as alleged? ..*OPP.*

(2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the claim petition is not maintainable in the present form? ..*OPR.*

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

(5) Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

*Issues No.*1, 2 *and* 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1997 continuously worked till October, 2005 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1998 till September, 2005 whereas the claimant/petitioner alleges that he had worked from 1997 to October, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1998 to September, 2005 and not from 1997 to October, 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1998 to 2005. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in the year 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 143 days in the year 1998, 133 days in 1999, 142 days in 2000, 102 days in 2002, 31 days in 2003, 105 days in 2004 and 54 days in 2005 and thus a total of his service in 1998 to 2005 in 7 years he had worked for 710 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2005 the petitioner had merely worked for 54 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2005 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. Thus, plea that persons were directed to be appointed in pursuance to awards were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2005, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the

case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *vs.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute inspite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh *Vs.* The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice

and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing**- cum-**Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment

of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra,*** claim of

petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** Vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** Vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** Vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 07 years and actually worked for 710 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **six years** *i.e.* demand notice was given on 31-11-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State**

Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of March, 2018.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 298/2016
Date of Institution : 12-05-2016
Date of Decision : 27-03-2018

Miss Anjna d/o Shri Sher Singh, r/o Village Kuthah, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Pangi at Killar Tehsil Pangi, District Chamba, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Miss Anjna d/o Sh. Sher Singh Village Kuthah, P.O. Dharwas, Tehsil Pangi, Distt. Chamba, H.P. during 9/2004 by the Executive Engineer HPPWD Division, Pangi at Killar Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 1467 days during the year 1991, to 2004 and has raised her industrial dispute *vide* demand notice dated nil (received in the office of the Labour Officer Chamba on 23/6/2012) after more than 6 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 6 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1990 who continuously worked till 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally

without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/ department had re-engaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/ retrenchment of respondent in the year 2004. She further prayed for reinstatement in service *w.e.f.* year 2004 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1990 to 2004 be counted 160 days continuous service and regularization of the services of petitioner under 8 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1991 who remained engaged till 2000 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in Para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2000 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/ proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B. K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers closed the evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D. A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 14-11-2017 for determination:

(1) Whether termination of services of the petitioner by the respondent during September, 2004 is/was improper and unjustified as alleged? ..*OPP.*

(2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the claim petition is not maintainable in the present form? ..*OPR.*

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

(5) Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs. 85,000/- per operative part of award.

*Issues No.*1 to 3

REASONS FOR FINDINGS

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1990 continuously worked till 2004 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions

by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1991 till October, 2000 whereas the claimant/petitioner alleges that she had worked from 1990 to 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1991 to October, 2000 and not from 1990 to 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1990 to 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in the year 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/ department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2000. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that

petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 22 days in the year 1991, 65 days in 1994, 51 days in 1995, 151 days in 1996, 130 ½ days in 1997, 175 days in 1998, 82 days in 1999 and 150 days in 2000 and thus a total of her service in 1991 to 2000 in 08 years she had worked for 826½ days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2000 the petitioner had merely worked for 150 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2000 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1991 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India** Vs**. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. RW1/C. Thus, plea that persons were directed to be appointed in pursuance to awards were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 2000, she had remained unemployed and was not earning anything thereafter as such

was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** Vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** Vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> **13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the

jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. Vs. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal

case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** Vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** Vs. **Sirhind Co-operative Marketing-*cum*-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of

Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** Vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase** Vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh** Vs. **General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra,*** claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** Vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the

Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** Vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 826½ days as per mandays chart on record and that the services of petitioner were disengaged in October, 2000 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 23-6-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to

be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.85,000/- (Rupees eighty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.85,000/- (Rupees eighty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of March, 2018.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 309/2016
Date of Institution : 12-05-2016
Date of Decision : 27-03-2018

Shri Udar Nath s/o Shri Amar Nath, r/o Village Guwari, P.O. Kumar, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, I.P.H. Division, Pangi, Tehsil Pangi, District Chamba, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Sh. Udar Nath s/o Sh. Amar Nath Village Guwari, P.O. Kumar, Tehsil Pangi Distt. Chamba H.P. from 10/2004 by the Executive Engineer, IPH Division, Pangi, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 933.5 days during the year 1995, to 2004 and has raised his industrial dispute *vide* demand notice dated 1/12/2011 after more than 6 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year 1995 to 2004 and delay of more than 6 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1995 who continuously worked till 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/ department had re-engaged number of new workman from time to time and while doing so,

respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2004. He further prayed for reinstatement in service *w.e.f.* year 2004 along-with back wages, seniority including continuity in service as petitioner as he had remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1995 to 2004 be counted 160 days continuous service and regularization of the services of petitioner under 8 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of demand notice, Ex. PW1/C and closed evidence. On the other hand,

repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 14.11.2017 for determination:

(1) Whether termination of services of the petitioner by the respondent during October, 2004 is / was improper and unjustified as alleged? ...*OPP.*

(2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP.*

(3) Whether the claim petition is not maintainable in the present form? ...*OPR.*

(4) Whether the claim petition is bad on account of delay and laches as alleged? ...*OPR.*

(5) Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.*1 : Yes

*Issue No.*2 : Discussed

*Issue No.*3 : No

*Issue No.*4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs.1,20,000/- per operative part of award.

*Issues no.*1, 2 *and* 4

REASONS FOR FINDINGS

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1995 continuously worked till 2005 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a

view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1995 to 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in the year 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 37 days in the year 1995, 109.5 days in 1996, 24 days in 1997, 124 days in 1998, 107 days in 1999, 134 days in 2001, 146 days in 2002, 129 days in 2003 and 123 days in 2004 and thus a total of his service in 1995 to 2004 in 09 years he had worked for 933 ½ days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 123 days

and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co- workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India** Vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. Thus, plea that persons were directed to be appointed in pursuance to awards were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** Vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self**

employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** Vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer".
>
> **13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
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> **14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** Vs. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows-
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> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the

appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute inspite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh Vs. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the

legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** Vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** Vs. **Sirhind Co-operative Marketing**-cum-**Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute- Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I. D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. his services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** Vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that

a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** Vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp.) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** Vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC** supra, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** Vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** Vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important

aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** Vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 09 years and actually worked for 933½ days as per mandays chart on record and that the services of petitioner were disengaged in October, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** *i.e.* demand notice was given on 23-6-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** Vs. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of March, 2018.

Sd/-
K. K. SHARMA
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref . No. : 141/ 2006

Sh. Chet Ram s/o Sh. Gouru Ram, r/o Village Near Gharwasra, P.O. Mahajernoo, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..*Petitioner.*

Versus

The Additional Superintending Engineer, HPSEB Division Joginder Nagr, District Mandi, H.P. ..*Respondent.*

26-03-2018 Present: None.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.40 A.M. Be awaited and put up after lunch hours.

Sd/-
K. K. SHARMA,
Presiding Judge, Labour Court-cum-*Industrial Tribunal, Kangra at Dharamshala, H.P.*

26-03-2018 Present: None.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his Ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non- prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
26-03-2018

Sd/-
K. K. SHARMA,
Presiding Judge, Labour Court-cum-*Industrial Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 48/2008
Date of Institution : 25-04-2013
Date of Decision : 31-03-2018

Miss Kunta Devi d/o Shri Lacho Ram, r/o Village Telka, P.O. Manjeer, Tehsil Salooni, District Chamba, H.P. ..*Petitioner.*

Versus

Executive Engineer, H.P.S.E.B. Division, Dalhousie, District Chamba, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Dharam Malhotra, Adv.
For the Respondent : Sh. Rohit Datta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the termination of services of Miss Kunta Devi d/o Shri Lacho Ram workman by the Executive Engineer, H.P.S.E.B. Division Dalhousie, District Chamba, H.P. *w.e.f.* 01-09-1996 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as clerk on 8-6-1994 on compassionate ground for a period of 89 days by respondent as father of petitioner suffered from 50% disability who had no family member to earn livelihood for which petitioner requested to competent authority for her appointment as clerk. Averments made in the claim petition revealed that competent authority had given approval for engagement of petitioner as clerk in exigency of work who was posted at Electrical Division Salooni under respondent. It is alleged that engagement of petitioner was further extended by competent authority from time to time and experience certificate was issued in favour of petitioner to have worked till 15-12-1994. The grievance of the petitioner remains that the work for the post of clerk was available with the respondent/board even after 15-12-1994 but approval for further extension was not given to petitioner after 22nd December, 1994 and thus action of board was challenged by the petitioner before Hon'ble High Court of H.P. by filing CWP no. 2343/1995 and from 22-11-1995 till the date of her illegal retrenchment in the month of June, 1996 petitioner had remained working with the respondent and has thus completed more than 240 days in preceding 12 calendar months from alleged termination and thus action of respondent in disengaging the petitioner was bad in the eyes of law as notice envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity) was served upon the petitioner. It is alleged that in pursuance to order of Hon'ble High Court of H.P. passed in CWP No. 2343/1995, petitioner had submitted representation dated 12-8-1996 along-with income certificate and scheduled caste certificate to the Board. It is alleged that petitioner was suffering from hypertension who could not attend duty *w.e.f.* 4-6-1996 to 12-9-1996 due to her ill health as the doctor had advised her to take care and rest which was necessary for restoration her health. It is alleged that due acute illness, petitioner got bedridden and obtained medical certificate(s) before finally representing on 12-8-1996 as stated above before competent authority who rejected representation on the ground of delay. It is claimed that vacancy of clerk was available with the respondent/board but respondent/board had not appointed petitioner rather petitioner had been discriminated with similarly situated persons who had been re-engaged in particular on the basis of representation made by one Dharmesh Raj which was accepted and period of absence from duty disengagement and that reengagement has been ordered to be counted with seniority without back wages by the respondent/board. As such, petitioner has alleged that disengagement of petitioner to be illegal in violation of provisions of Section 25-H of the Act and that juniors had been appointed ignoring rights of the petitioner. It is alleged that petitioner had also filed petition before the Hon'ble Administrative Tribunal *vide* O.A. No. 1025/1997 and vide order dated 28-10-2005 petitioner had withdrawn case with liberty to seek redressal of grievance before appropriate forum. Accordingly, petition filed before Hon'ble Administrative Tribunal was dismissed as withdrawn on the basis of statement of petitioner. The petitioner has thereafter issued demand notice followed by conciliation before Labour authority which failed in pursuance to which reference has been before this court. The petitioner thus prays that respondent be directed to reinstate petitioner on post of clerk and be paid wages for the period of absence, seniority and consequential benefits etc. and the service of petitioner

be ordered to be regularized from the date of her completion of 240 days service with arrears of pay allowances and consequential benefits.

4. The respondent contested the claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, limitation. On merits admitted that petitioner had been engaged by respondent on compassionate ground on the request of petitioner for a specified period of 89 days vide order dated 8.6.1994 *w.e.f.* 15-6-1994 in the exigencies of work and further extension of 89 days was given on 14-9-1994 *w.e.f.* 17-9-1994 on casual basis. It is claimed that engagement of petitioner was on fresh contract basis which automatically came to an end on the expiry of said period. It is claimed that there was no further requirement of petitioner to be engaged, as regular person on said post had joined against which petitioner had been given extension from time to time and for said reason petitioner was no longer required. It is admitted that petitioner had challenged her retrenchment before Hon'ble High Court of H.P. by way of CWP No. 2343/1995 however denied that petitioner had completed 240 days in preceding 12 calendar months from date of her termination. It is categorically stipulated in the reply that petitioner had failed to file fresh representation before respondent in pursuance to order dated 7-5-1996 within stipulated period of one month however admitted that *vide* letter dated 24-6-1996, Secretary, HPSEB, petitioner was given opportunity to submit income certificate along-with economic status of the family to be issued by SDM within 15 days to which petitioner again failed to comply with. However, personal hearing was given to petitioner on 12.9.1996 in which she failed to convince respondent reasons for not preferring representation within stipulated period and as such claim of petitioner was rightly rejected by respondent. Asserting that representation of petitioner had been rightly rejected however denied that petitioner was bedridden who could not move. It is stated that no vacancy was available with respondent and on regular vacancy in office a clerk had already joined against which petitioner had earlier been given extension of her service. It is asserted that case of Dharmesh Raj was not applicable to the facts in hand. It has been denied that any junior to the petitioner had been retained in service by the respondent however service of only those workers had been regularized who fulfilled the criteria as fixed by the respondent/board. It is asserted that absence of petitioner intentional and deliberate for which she could not render any satisfactory explanation. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of judgment dated 22-11-1995 Ex. PW1/B, copy of order dated 7-5-1996 Ex. PW1/C, copy of letter dated 18-9-1996 Ex. PW1/D, copy of letter dated 6.9.1996 Ex. PW1/E, copy of medical certificate Ex. PW1/F to Ex. I, copy of appointment letter Mark-A, copy of representation Mark-B, copy of letter dated 30-6-1996 Mark-C, representation of employment for clerk Mark-D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Rajinder Thakur, the then Sr. Executive Engineer, HPSEB, Dalhousie, Chamba as RW1 tendered/proved his affidavit Ex. RW1/A and closed the evidence.

7. It would be pertinent to mention here that aggrieved with the award dated 27-6-2012 passed in the present reference petition, petitioner filed CWP No.10657/2012 before Hon'ble High Court of H.P. and *vide* order dated 4-10-2017 Hon'ble High Court has quashed the award so passed by my Ld. predecessor with direction to this court to return findings on merits on issues no.1 to 4 without being influenced in any manner by the order.

8. I have gone through the written arguments dated 23-3-2018, against which no written reply was filed by respondent and also heard the ld. counsels of parties gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed by my Ld. predecessor on 30-4-2011 for determination which are as under:

(1) Whether the termination of the petitioner *w.e.f.* 01-9-1996 is violative of the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act, 1947 as alleged. If so, what relief the petitioner is entitled to? ...*OPP.*

(2) Whether the reference is not maintainable as alleged. If so what effect? ...*OPR.*

(3) Whether the reference is barred by limitation as alleged. If so to what effect? ...*OPR.*

(4) Relief.

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issue no.1

11. Admittedly, petitioner had been appointed by respondent in service as daily wage clerk for 89 days and served till 21-5-1995 when service of petitioner were terminated by verbal order of respondent. It is also not in dispute that in pursuance to her termination from service, petitioner had preferred CWP No. 2343/1995 before the Hon'ble High Court of H.P. in which Hon'ble High Court *vide* order dated 22-11-1995 Ex. PW1/B respondents had been directed to take back service of petitioner in interim. Thereafter, aforestated CWP was disposed of vide order dated 7-5-1996 with direction to petitioner to file representation before respondent within one month i.e. on or before 6-6-1996 and thereafter said representation was to be disposed of by speaking order by respondent in one month Ex. PW1/ is the copy of order dated 7-5-1996 of Hon'ble High Court in CWP No. 2343/1995. Evidently, petitioner was given one month's time to file representation before respondent *i.e.* Executive Engineer, HPSEB Division Dalhousie, District Chamba, H.P. who was to dispose of representation within one month in which he was to decide whether ground for compassionate appointment existed or not in favour of petitioner. In the backdrop of the foregoing admitted facts and evidence, the grievance of petitioner *qua* her illegal termination in violation of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act needs to be determined.

12. Stepping into witness box as (PW1) Smt. Kunta Devi has sworn in affidavit Ex. PW1/A reiterated her stand as maintained in the claim petition. She has specifically stated in her affidavit before this court that she could not file representation as she had fallen sick on 4-6-1996 and remained under treatment and was advised rest from 4-6-1996 to 3-12-1996 and 12-1-1997 as was evident from medical certificate dated 3-8-1996, 4-10-1996, 3-12-1996 & 12-1-1997 issued by Government Ayurvedic Dispensary Sundla and Salooni (District Chamba). It

is categorically stated that petitioner became fit to join duty on 12-1-1997 but claimed that she had submitted the representation in the month of June, 1996 through one Shri Malik, a clerk with respondent but said representation was misplaced. It is alleged that on knowing that said representation was misplaced, she had filed another representation which was duly acknowledged by dealing clerk and petitioner was asked *vide* letter dated 6.9.1996 to attend the office along-with representation and other certificates however representation of petitioner was rejected *vide* office order No. 251297/96-6818-22 dated 18-9-1996 by Executive Engineer, HPSEB Division Dalhousie, District Chamba, H. P. It is also alleged in affidavit that representation of the petitioner has been rejected on the ground of delay for not filing representation within stipulated period of one month and not on merits ignoring the fact that deponent was ill and under treatment and was advised rest as was evident from medical certificates referred to above. It is further revealed from the affidavit that petitioner had moved before Hon'ble Administrative Tribunal Shimla in May, 1997 but she had withdrawn the same as on the ground of jurisdiction in pursuance demand notice was issued to respondent followed by conciliation but failed and thereafter reference to this count was made by Labour Commissioner, Shimla *vide* his letter dated 28-1-2008. Cross-examination of petitioner reveals that Hon'ble High Court of H.P. while passing order in her favour had given her direction to file representation within period of one month from 7-5-1996 meaning thereby that petitioner was to make representation before 6-6-1996. She has denied in cross-examination that no representation was filed with the respondent within one month however claimed that Mark-B was the representation but admitted that said representation did not bear any date besides being photocopy. She has denied that Mark-B was forged and fabricated document. She has specifically admitted that she had given representation with Board on 12-8-1996. She admitted that while submitting representation she did not produce any medical certificate. From testimony of petitioner who has proved in her statement the certified copy of order dated 22-11-1995 Ex. PW1/B from Hon'ble High Court of H.P. the petitioner was directed to be taken in service and thereafter *vide* order dated 7-5-1996 Ex. PW1/C an opportunity to make representation before respondent was afforded in which respondent was to determine if there still existed ground for compassionate appointment. It was specifically stipulated in the order dated 7-5-1996 that in case representation was rejected, the petitioner was to approach the Hon'ble High Court and for that purpose, interim order shall continue for another 10 days.

13. It is not the case of the petitioner that in pursuance to rejection of her representation *vide* order dated 18-9-1996 petitioner had approached the Hon'ble High Court rather the case of the petitioner remains that her service had been illegally terminated by respondent on 1-9-1996. (RW1) Shri Rajinder Thakur, Sr. Executive Engineer, HPSEB Division Dalhousie has admitted in cross-examination that respondent had been removed by verbal order from service on 1-1-1996 besides admitted that matter had been challenged by petitioner before Hon'ble High Court and that petitioner was re-engaged on 22-11-195 in pursuance to order Ex. PW1/B. He has denied that petitioner had made again representation to the department which had been received by Upper Division Clerk Mr. Malik. RW1 admitted that petitioner had given representation to the department on 12-8-1996 and she was called for personal hearing and thereafter her representation was rejected as has came in evidence on record. He has further supported the case of petitioner to the extent that petitioner continued to work till 31-8-1996 but respondent did not give any notice while terminating her service. From the evidence on record, it can be safely inferred that initially petitioner had worked for 89 days twice from 15-6-1994 to 21-5-1995 who continued to work till 31-8-1996 and that respondent did not issue any notice before terminating her service. The above said evidence clearly shows that petitioner had factually worked for more than 240 days *i.e.* from 22-5-1995 to 31-8-1996. Be it stated that RW1 Shri Rajinder Thakur in his affidavit Ex. RW1/A has not at all controverted these facts in examination-in-chief which necessarily follows that respondent does not dispute contention of petitioner to have worked for more than 240 days continuously prior to her termination on 1-9-1996. As

such, when petitioner continued to work for more than 240 days as stated above, it required respondent to have issued notice under Section 25-F of the Industrial Disputes Act which it omitted to and thus respondent is held to have violated Section 25-F of the Industrial Disputes Act.

14. In so far as violation of provisions of Sections 25-G and 25-H are concerned, there is no *iota* of evidence on record except the name of Dharmesh Raj who is stated to be similarly situated, engaged and worked continuously. Be it stated that no seniority list has been produced by petitioner to establish that any junior had been retained and petitioner had been terminated from service at the same time, the fact that petitioner was appointed at instance of Hon'ble High Court of H.P. order during pendency of CWP No. 2343/1995. In such like situation, there could be occasion for respondent department to have to include name of petitioner in the seniority list and at the same time petitioner was not debarred to get records of Dharmesh Raj and others while leading her evidence who were stated to be junior to petitioner but has not been brought in evidence leading to an irresistible inference that respondent had not violated Section 25-G of the Industrial Disputes Act which dealt with procedure for retrenchment as the termination of service had not such basis except that petitioner did make representation as directed by the Hon'ble High Court of H.P. *vide* its order dated 7-5-1996. In such like situation, when there exist no seniority list and there is no reliable evidence adduced by petitioner establishing that any junior to petitioner was retained and petitioner was disengaged, it could not be stated that respondent had violated provisions of Sections 25-G of the Industrial Disputes Act and for similar reason, respondent was not expected to have issued any notice to petitioner for re-engagement or reemployment in absence of reliable evidence to this effect. As such, respondent is held to have not violated either Section 25-G & 25-H of the Industrial Disputes Act. Issue in question is decided accordingly

Issue no. 2

15. At the outset, it would be apt to mention here that *vide* order dated 7.5.1996 Ex. PW1/C the Hon'ble High Court of H.P. had directed respondent to decide representation of petitioner which was to be made by her within one month from date of order. It is evident from evidence on record that petitioner did not prefer representation within a period of one month from the date of order *i.e.* on or before 6-6-1996. Significantly, representation Mark-B did not bear any date as has been admitted by petitioner in cross-examination. Although, petitioner has denied that Mark-B was forged and fabricated document but this document has not been duly proved in accordance with law and as such cannot be looked into evidence so as to determine if petitioner had factually made representation within period of one month moreso representation in question did not bear any date and did not accompany copy of CWP No. 2343/1995 as was mentioned in Mark-B. The petitioner has denied in cross-examination that Secretary HPSEB, Shimla had written letter dated 24-6-1996 which was received by her and despite the said letter no representation was made by her. Significantly, petitioner has admitted that she had made representation on 12-8-1996 but denied that respondent/board had given to her opportunity of personal hearing on 12-9-1996. She has specifically denied that she could not give any answer to question as to why representation was made by her *i.e.* beyond the time period prescribed by Hon'ble High Court of H.P. even she admitted that on 12-9-1996 when she was called for personal hearing, she did not produce any certificate of illness. It is not understood as to why medical certificate(s) which were in existence not produced and was afforded opportunity to explain her position *qua* her entitlement to be appointed on compassionate grounds.

16. A bare glance at the order dated 18-9-1996 of respondent would reveal that relief sought for by Smt. Kunta Devi (petitioner) in her CWP No. 2343/1995 was rejected on the ground that representation was not made as per order of Hon'ble High Court dated 7-5-1996 Ex. PW1/C and the copy of letter dated 8-9-1996 was also forwarded to Secretary, HPSEB,

Shimla. It is evident from order that petitioner did not file representation within stipulated period of 30 days. It is also evident from order that petitioner was given opportunity to submit income certificate and economic status of family within 15 days in pursuance to which letter dated 24-6-1996 Secretary HPSEB to which again she did not file to comply. Meaning thereby that even after expiry of period in which the petitioner could made representation letter was issued by Secretary HPSEB giving opportunity to file income certificate along-with economic status of family issued by concerned SDM to which petitioner again did not respond and finally she was called for personal hearing on 12-9-1996 to which she failed to convince the undersigned reasons for not preferring representation within period of 30 days as directed by the Hon'ble High Court of H.P. Although, the order of respondent does not specifically stipulate if there existed ground for compassionate appointment as mentioned in order dated 7-5-1996 passed in CWP No. 2343/1995 yet sufficient opportunity was given to petitioner to produce income certificate and economic status of family certificate by Secretary, HPSEB to which the petitioner again did not respond. Thereafter again letter was issued on 6-9-1996 Ex. PW1/E calling upon petitioner to appear in person in office of respondent on 12-9-1996 at 11.00 A.M. Even there existed no specific ground for appointment if compassionate grounds in favour of petitioner. Even if respondent did not discussed in his order rejecting representation that if there existed compassionate ground in favour of petitioner but the fact remains that petitioner was required to produce certain documents before respondent as discussed to which she failed. Even she did not file her medical certificates which could establish delay in filing representation when she was given opportunity of personal hearing on 12-9-1996 again she did not produce any evidence which would substantiate her plea *qua* her entitlement of compassionate appointment. Mark C & D have although been tendered in evidence which are not proved in accordance with law as these documents appear to be not existing in the records of respondent. The letter dated 30-6-1996 related to submission of income certificate. As such, despite reasonable opportunities afforded to petitioner, she did not bring on record before the respondent that she was entitled for appointment on compassionate ground. As such, respondent had rightly rejected the representation which was manifestly time barred in pursuance to order dated 7-5-1996 Ex. PW1/C of the Hon'ble High Court of H.P. Even otherwise also the petitioner had to approach the Hon'ble High Court when her representation was rejected which has not so been done in this case. She has instead approached Hon'ble Administrative Tribunal, Shimla with liberty to file case before appropriate authority in pursuance to which she had issued demand notice and conciliation was made but failed and thereafter reference was made by Labour Commissioner. Thus, petitioner even did not adhere to direction so passed by Hon'ble High Court of H.P. and cannot seek remedy before this court.

17. In so far as delay in filing the representation is concerned, petitioner has relied upon medical certificate issued by Ayurvedic doctors Ayurvedic Dispensary Sundla as well as Salooni. PW1 in her cross-examination admitted that on 12-9-1996 she did not produce any certificate regarding illness before respondent. Be it stated that on said date petitioner had been given opportunity of personal hearing as is evident from Ex. PW1/B. If the petitioner was sick and not able to attend the office of respondent and submit her representation, the reason for not producing medical certificate dated 3-8-1996 is not understandable. Although my ld. predecessor has observed that medical certificate Ex. PW1/F to I were forged and fabricated documents but it seems before arriving at such conclusion, it was necessary that the court on its own motion should have called doctor in the witness box and ascertained the correctness and truthfulness of medical certificates but merely because petitioner did not produce medical certificates which were allegedly in possession on 3.8.1996 and not produced on 12-9-1996 before respondent does not *ipso facto* establish that these medical certificates were false which could not be relied but in either situation, the petitioner had not preferred representation within stipulated period and even the medical certificate was relied upon by her were not duly proved as doctors who issued these certificate were not called in the witness box. In such like situation, this court is left with no

option but to hold that delay in filing representation on medical grounds is not convincing and reliable and it has to be held that petitioner had caused delay in filing representation on 12-8-1996 which has remained unexplained and at the same did not produce on record for her entitlement to be appointed on compassionate grounds before respondent and on this score claim petition is not maintainable. Issue No. 2 is answered in affirmative against the petitioner and in favour of respondent.

Issue No. 3

18. This issue was not pressed by Ld. Counsel for respondent however, it is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another** Vs**. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand** Vs. **Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar** Vs. **HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd.** Vs. **Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh** Vs. **Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> *"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

19. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the *vice* of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief

20. As a sequel to my findings on foregoing issues no.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2018.

Sd/-
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 42/2013
Date of Institution : 25-04-2013
Date of Decision : 31-03-2018

Shri Sunil Kumar s/o Shri Dharmapal, VPO Saghnei, Tehsil Amb, District Una, H.P.
...Petitioner.

Versus

The Managing Director, M/S Luminous Power Technologies Pvt. Ltd. Unit-I, Ram Nagar, Gagret, Tehsil Amb, District Una, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Virender Sharma, Adv.
For the Respondent : Sh. Jitender Sharma, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether termination of the services of Sh. Sunil Kumar s/o Sh. Dharmapal, V.P.O. Sanghnei (सगनेई), Tehsil Amb, Distt. Una, H. P. by the management of The Managing Director, M/S Luminous Power Technologies Pvt. Ltd. Unit-I, Ram Nagar, Gagret, Tehsil Amb, Distt. Una, H.P. either *w.e.f.* 23-9-2011 or 09-2-2012 is legal and justified? If not, what relief including reinstatement in service, back wages, seniority, service benefits, and compensation the above aggrieved workman is entitled to from the above management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been employed by respondent company in the year 2005 on *adhoc* basis who was confirmed

in the year 2006 as permanent employee deployed to operate 'Spine casting machine' in production department. It is alleged that there were 15 number of spine casting machines in the production department of respondent company which were under control of petitioner who used to work hours/shift basis and kept machinery in proper condition. It is alleged that on 23rd September, 2011, petitioner was not allowed to enter factory premises by gate security staff who disclosed that respondent had directed him to not allow entry of petitioner till he filed reply to letter dated 23-9-2011 issued by respondent. It is further alleged that on 27-9-2011 petitioner had received a registered letter from Manager, Industrial Relations calling upon him to submit written reply to the allegations in the said letter made within 24 hours from receipt of letter failing which it would be presumed that petitioner had admitted his mistake and the company would be free to take action against him. Averments made in claim petition further revealed that petitioner was on night shift on 21st September, 2011 who was allegated by supervisor/shift incharge that petitioner had committed negligence in performance of duties by omitting to clean spine casting machine before running the same due to which 2000 spines got spoiled. Averments made in the petition further revealed that nothing of that sort had factually happened on night of 21-9-2011while submitting reply to the above said letter. Allegations so made by respondent had been denied by stating that machine was properly cleaned before starting the same as per his daily routine and was working properly without any interruption for a period of 12 hours from 7:00 P.M. to 7:00 A.M. morning of 22nd September, 2011. It is alleged that in pursuance to submission of reply so made by petitioner, respondent directed the staff of the gate security to not allow entry of petitioner inside factory premises however petitioner continuously came to join duty but the security staff did not allow him to enter factory premises. It is alleged that on 25-10-2011 petitioner received another registered letter dated 19-10-2011 from respondent in which reference of previous letter dated 25-9-2011 and 1-10-2011 had been made and those letters were factually never received by petitioner, respondent *vide* letters dated 25-10-2011 exhibited his intention to terminate service of petitioner on flimsy grounds which was replied by petitioner through registered letter dated 27-10-2011 whereby petitioner disputed receipt of above said letters dated 25-10-2011 and 1-10-2011 besides clarified that he was continuously coming to attend duty but was prevented by security staff to not enter factory premises and vide above said letter, petitioner had also requested respondent to direct to security guard to allow him to enter into factory premises. It is alleged that vide letter dated 19.10.2011, the respondent directed the petitioner to obtain payment of his dues as they presumed that petitioner had left the job of his own will. It is claimed that management of the respondent terminated the service of the petitioner on 23-9-2011 by not allowing petitioner to enter into factory premises without making any inquiry, charge-sheet, notice, retrenchment compensation and salary in lieu of notice in utter disregard to the provisions of the Industrial Disputes Act, 1947 (hereinafter after called 'the Act' for brevity). It is claimed that petitioner had duly replied letter dated 29-10-2011 of respondent through registered letter dated 3-11-2011 followed by representation of petitioner to Labour Inspector-*cum*-Conciliation Officer, Circle Amb, District Una copy of which was also served upon respondent a 10 days notice to take petitioner back on work through registered letter dated 7-12-2011. It is alleged that after receipt of the representation of the petitioner, Labour Inspector initiated conciliation proceedings and called the respondent to attend his office on 20.1.2012 through his letter dated 11-1-2012. It is alleged that petitioner himself and one female officer Assistant Manager on behalf of respondent appeared before the Labour- cum-Conciliation Officer in which it was revealed on behalf of respondent that a person in place of petitioner had been engaged and had no vacancy and for said reason conciliation could not be effected. In pursuance to failure of conciliation proceedings, petitioner issued demand notice dated 27-1-2012. It is alleged that during conciliation proceedings the respondent had called the petitioner to the factory premises and asked him to fill in a leave application form on 8-2-2012 for half day so that his service may be continued and after submission of application respondent directed the petitioner to work as sweeper and clean bathrooms, but the same was not accepted by the petitioner as he had worked as machine

operator with the respondent. It is alleged that due to conduct of the respondent company, petitioner again made a complaint to Labour Officer, Una *vide* letter dated 10-2-2012. It is alleged that even after receipt of above said demand notice and failure of conciliation, the respondent continued to send inconsequential, mischievous and unwarranted letters to petitioner calling him to resume duty. It is claimed that respondent continuously sent number of letters with the object to fill up the lacunae but respondent was factually not interested that petitioner resumed duty. It is claimed that respondent issued letter dated 29-3-2012 purporting to be show cause notice and that termination of petitioner is based on no inquiry and charge-sheet which was illegal in view of provisions of Section 25-F of the Act besides there was clear cut violation of provisions of Sections 25-G & 25-H of the Act by engaging fresh workman in place of petitioner without following the principle of 'Last come First go' and without granting opportunity of re-employment to petitioner. Accordingly, petitioner prays for his reinstatement in service with direction to respondent to grant him promotional benefits, back wages, seniority, service benefits and compensation as per provisions of the Act.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, act and conduct, petitioner having not come to the court with clean hands, petitioner having violated terms and conditions of his appointment order dated 1-1-2008 and that petitioner having abandoned the job voluntarily despite several opportunities to join duty. On merits denied that petitioner had been engaged by respondent in the year 2006 rather petitioner was engaged on 1st January, 2008 by respondent as helper in the production department who was to help other workmen for operating spine casting machine. It is denied that petitioner performed duties to the entire satisfaction of his seniors and management besides that spine casting machine was under control of petitioner although petitioner's duty was to clean and keep spine machine in proper condition. On merits it has also been contended that on 21-9-2011 a complaint was received from shift supervisor of respondent company against the petitioner in which it was specifically mentioned that petitioner had failed to discharge his duty diligently and caused loss to respondent company and thereafter letter dated 23-9-2011 was sent to petitioner calling upon him to explain his act and conduct within 24 hours but the petitioner failed to give reply and deliberately absented from his duties *w.e.f.* 23-9-2011. It has been emphatically denied that petitioner had come to join his duties on 23-9-2011 when he was not allowed to enter into factory premises by the gate security staff and thus petitioner had made accusation just to spoil the reputation of respondent company. It is categorically mentioned in the complaint by shift supervisor that 2000 spines were spoiled by the petitioner causing loss of Rs.20,000/- to the respondent company and on complaint of shift supervisor management had issued letter dated 23-9-2011 as there was sufficient evidence against the petitioner for having performed his duty in not cleaning machine before being operated. It has been denied that respondent did not make further inquiry into the matter. It is claimed that letter dated 23-9-2011 was sent to petitioner showing gross negligence and disobedience of lawful order of his supervisor. The petitioner was again issued letters dated 25-9-2011, 2-10-2011, 19-10-2011 and 29-10-2011 calling upon to explain his conduct and resume his duties but neither reply was given nor the petitioner resume service. It has been emphatically denied that service of petitioner had been terminated by respondent rather petitioner deliberately did not join his duty till 8-2-2012 and had abandoned job. It is claimed that on 8-2-2012 of his own accord petitioner had joined in the morning and in the afternoon asked for half day leave which was granted on the application for leave submitted by petitioner. It is alleged that petitioner came on 9-2-2012 but did not resume duty and thus abandoned his job. It is alleged that respondent in compliance of rules conducted an inquiry and due opportunity to lead evidence and date was given to petitioner but petitioner failed to appear before Inquiry Officer in the inquiry proceedings despite several reminders and information through registered letters and even personally through messengers. It is emphatically denied that security guard did not allow petitioner to join duty and stopped him at the main gate of factory and that petitioner never turned up on 23-9-2011 to 7-2-2012 and from 10-2-2012

till the date of filing of reply. It is thus clear that after holding inquiry petitioner was found to have committed major misconduct in pursuance to submission of inquiry report respondent issued a show cause notice dated 14-5-2012 along-with inquiry report to the petitioner whereby he was asked to show cause as why he should not dismissed from service within 72 hours from the date of receipt of show cause notice but petitioner refused to receive the letter which was accompanied with inquiry report and finally on 19/20-5-2013 the order of dismissal was sent to the petitioner through registered letter on 21-5-2013 which was refused to be received by petitioner. It is claimed that dismissal order was passed by competent authority after holding departmental inquiry and only after the dismissal of petitioner, respondent engaged one helper on **13-6-2012** in order to run smooth functioning of unit. It has been denied that respondent ever intimated Conciliation Officer during proceedings before it that workman had been engaged in place of petitioner rather one helper was engaged on 13-6-2012 much after dismissal of petitioner. It is contended that demand notice dated 10-2-2012 was received but factually it was received on 25-3-2012 from the office of Labour-*cum*-Conciliation Officer and same was duly replied. It is alleged that Labour-cum-Conciliation Officer informed the petitioner to join his duties but petitioner failed to join duty despite directions. It is denied that petitioner was ever engaged as machine operator and that after start of the conciliation proceedings, respondent sent number of letters. It is alleged that petitioner was given number of opportunities to join duty as well as to join departmental inquiry and there was no bar to conduct an inquiry which was an independent proceedings and petitioner was asked to appear before the Inquiry Officer to explain his conduct which he failed as such dismissal order was rightly passed by respondent/management after following needful procedure. It has been denied that dismissal order of petitioner was illegal and was in violation of Section 25-G and 25-H of the Industrial Disputes Act, 1947 instead petitioner himself left the job of the respondent. Accordingly petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition asserted that he was appointed in the year 2006 and worked as machine operator with the respondent. It is alleged that respondent's intention could be gathered from registered letters dated 29-10-2011 and 20-1-2012 where formal termination of service of petitioner was made by the respondent. It has been denied that even after 8-2-2012 respondent had asked to petitioner to join duty and information thereof was sent to the Labour Officer.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/ proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copies of letter dated 23.9.2011, 27-9-2011 Ex. P1 to P2, copy of postal receipt Ex. P3, copy of letter dated 19-10-2011 Ex. P4, copy of letter dated 27-10-2011 Ex. P5, copy of postal receipt Ex. P6, copy of letter dated 29-10-2011 Ex. P7, copy of letter dated 3-11-2011 Ex. P8, copy of postal receipt Ex. P9, copy of representation of petitioner Ex. P10, copy of letter dated 11-1-2012 Ex. P11, copy of demand notice Ex. P12, copies of postal receipts Ex. P13 to P15, copy of letter dated 10-2-2012 Ex. P16, copy of letter dated 7-12-2011 Ex. P17, copies of postal receipts Ex. P18 & P19, copy of report of conciliation officer Ex. P20. Petitioner examined Shri Ajay Kumar as PW2, copy of affidavit of Shri Ajay Kumar Ex. PW2/A, copy of identity card of Sh. Ajay Kumar Ex. PW2/B, copy of appointment letter to Sh. Ajay Kumar Ex. P6, copy of conciliation report Mark-A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri M.L. Kalra as RW1 tendered/proved mandays chart of petitioner Ex. RW1/A, copy of letter dated 4-4-2012 Ex. RW1/B, copy of letter dated 10-4-2012 regarding inquiry Ex. RW1/C, letter through registered post Ex. RW1/D, copy of inquiry report Ex. RW1/E. The respondent examined Shri Govind Ram, Sr. Manager as RW2, tendered/proved his affidavit Ex. RW2/A, copy of compliant dated 21-9-2012 against the petitioner Ex. RW2/B, copy of letter dated 25-9-2011 Ex. RW2/C, copy of letter dated 1-10-2011 Ex. RW2/D, copy of letter dated 19-10-2011 Ex. RW2/E and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed by my Ld. predecessor on 17-8-2013 for determination which are as under:

(1) Whether the termination of the services of the petitioner by the respondent either *w.e.f.* 23-9-2011 or 9.2.2012 is illegal and unjustified as alleged? ...*OPP.*

(2) Whether the petition is not maintainable in the present form? ...*OPR.*

(3) Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...*OPR.*

(4) Whether the petitioner has violated the terms and conditions of his employment dated 01-01-2008 as alleged. If so, its effect? ...*OPR.*

(5) Whether the petitioner has not come to the court with clean hands as alleged. If so, its effect? ...*OPR.*

(6) Whether the petitioner voluntarily abandoned the job as alleged. If so, its effect? ...*OPR.*

(7) Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Yes
Issue No. 3	: Yes
Issue No. 4	: Yes
Issue No. 5	: Unpressed
Issue No. 6	: Yes
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

*Issues No.*1, 3 4 *and* 6

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner (PW1) Sunil Kumar is himself not certain if his service had been terminated by respondent either on 23-9-2011 or on 9-2-2012. Be it noticed that reference received from appropriate government in this case had similar stipulation on the point of termination of petitioner on two dates as stated above. As such, an uncertainty has arisen in petitioner's claim and reference so received from the appropriate government as to when the petitioner had been factually terminated by respondent. Certainly, plea of respondent remains that petitioner had been dismissed from service on 19-5-2012 *vide* order Ex. RW2/Z1 after holding departmental inquiry in which two charge-sheets and one supplementary charge sheet had been raised, the former charge sheet No. 818 related to

gross negligence in spoiling 2000 spines in the night shift on 21.9.2011 by petitioner which caused financial loss to the respondent to the tune of Rs. 20,000/- and another charge-sheet No. 823 related to petitioner's unauthorized absence from duty from 23-9-2011 to 7.2.2012 and from 10-2-2012 onwards continuously. The 3rd supplementary charge-sheet No. 823 dated 23-4-2012 relates to refusal of petitioner to receive letter dated 4-4-2012 which was misconduct under clause 26(35) of Certified Standing Orders of respondent company.

12. Onus of proof to prove termination of on 23-9-2011 lied on petitioner. To appreciate this plea of petitioner, it would be relevant to go through his testimony on oath. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A reiterating his stand as maintained in the claim petition. On the point of termination on 23-9-2011, it has been stated in the affidavit that petitioner had come to attend duty but was not allowed to go inside factory premises by main gate security staff who disclosed that respondent had directed to not allow petitioner until he submitted reply to letter dated 23-9-2011. The reason attributed by respondent in reply as well as evidence showed that petitioner was engaged as class-IV employee appointed as a helper on 1-1-2008 *vide* letter of appointment Ex. R1 who was to maintain cleanliness of the spine casting machine and on 21-9-2011 (night shift) the Supervisor/incharge found that petitioner had spoiled 2000 spines as he did not clean the machine properly due to which respondent had sustained loss of Rs. 20,000/-. Be it stated that the shift incharge had notified incident to the authorities/respondent in pursuance to which explanation of the petitioner was called vide letter Ex. P1 dated 23-9-2011 which had been sent through registered letter. The petitioner in his reply Ex. P2 dated 27-9-2011 pleaded ignorance about any such incident which resulted in spoiling of spines as allegated against him. In para No. 2 of Ex. P2 it is specifically alleged that petitioner performed his duty diligently on relevant date and as usually being done by him and the machine continued to work for 12 hours on the relevant date. The version of petitioner remains that he was not allowed to go and attend duty in the factory on 23-9-2011 could not be believed as in his reply, he has not whispered even a single word that from 23-9-2011 to 27-9-2011 when he filed reply to notice dated 23-9-2011 he remained either engaged or disengaged by respondent particularly when it is the case of the petitioner that he was not allowed to join duty on 23-9-2011. Significantly, in cross-examination petitioner has made futile attempt to establish that as per the direction of the respondent, petitioner was not allowed to enter factory. Although in his affidavit, petitioner has revealed that nothing of that sort had happened on 21-9-2011 which caused loss to the respondent as allegated against him but his own witness PW2 Ajay Kumar who was a co-worker as helper had deposed having seen the incident in which petitioner had spoiled 2000 spines due to not properly cleaning machine when checked by supervisor on the same night. PW2 has although supported petitioner's claim to the extent that petitioner was not allowed to enter the factory premises on 23-9-2011 for about two months as petitioner continuously came for duty but in cross-examination he has specifically admitted that on 21-9-2011 petitioner had spoiled 2000 spines due to which respondent had sustained loss of Rs. 20,000/-. This witness has shown his inability to tell as to who was guard on main gate on 23-9-2011 had obstructed petitioner or did not allow petitioner to go inside the factory telling him to file reply to explanation and would not permit by management to do duties till reply was filed. Significantly, neither petitioner PW1 nor PW2 had complained any one in factory about conduct of guard in not allowing him to enter factory for duty or Labour Inspector (Amb). Version of PW2 cannot be disbelieved for two reasons firstly that this witness had worked with the respondent on the relevant date and his identity stands proved from Ex. R6 and was present on 21-9-2011 at night. Be it stated PW2 had also left the job of respondent for which respondent had issued registered letter dated 21-6-2011 to resume duty but despite letter received by PW2, he did not join duty who also belonged to village of petitioner is an interested witness but he has in unequivocal terms stated that on 21-9-2011 he had seen that petitioner had spoiled 2000 spines of respondent and caused resultant loss of Rs.20,000/- Neither in claim petition nor in his affidavit, petitioner has named any guard who did not allow him on 23rd

September, 2011 or thereafter for next two months as also deposed by PW2 appears to be highly unnatural and unbelievable as it could not be imagined that petitioner kept coming for duty for two months in the hope of being allowed to join duty which was not witnessed by anyone except PW2 who is an interested witness. No one from factory or any other person who might have seen petitioner coming at the factory gate for two months every day as claimed has been examined except PW2 co-worker. In conciliation proceedings before Labour Inspector, Amb as shown in Ex. P20, the petitioner has clearly stated on 23-2-2012 that he would not join duty with respondent till his previous wages *w.e.f.* September, 2011 till the date of conciliation proceedings were not paid. As such, it would be also relevant to refer to para no.6 of the claim petition in which claimant/petitioner has specifically alleged that *vide* letter dated 27-10-2011 Ex. P5 respondent exhibited intention to terminate to service of petitioner as stated above which established that actually petitioner was not terminated till 27-10-2011 as in reply Ex.R2 petitioner has not made any such allegations and contrary to para no.6 which has been stated in para no.8 stipulated that respondent terminated service on 23-9-2011 by not allowing him to enter factory premises. As such, evidence with regard to termination of petitioner on 23-9-2011 cannot be believed so as to hold petitioner was factually terminated by respondent prior to his dismissal as claimed by respondent.

13. In so far as controversy with regard to termination on 9-2-2012 is concerned, again there is no reliable evidence. Before proceeding further, it would be relevant to mention here that petitioner had **served two demand notices one on 27-1-2012 Ex. P2**. Another **demand notice on 10-2-2012 Ex. P10** which was not addressed to the respondent pertained to subsequent unauthorized absence and was not found proper by conciliation officer as is evident from records of proceedings Ex. P20. It would be most pertinent to mention here that respondent in his reply had specifically pleaded that petitioner had abandoned his job and despite various registered letters sent on his address, he did not resume duty rather at several occasions refused to receive letters sent by registered post by respondent. With this plea in mind, it would be relevant to refer to testimony of petitioner on the point termination on 9-2-2012. In his affidavit, Ex. PW1/A petitioner has stated that during conciliation proceding before Labour Inspector Amb respondent had called petitioner to factory and asked to submit leave application for 8-2-2012 so that his service could be continued but his statement that he joined on being called by respondent appears to be highly unreliable. PW2 has deposed that he did not realize the nefarious designs of respondent and when he joined duty on 8-2-2012, he was asked to work as sweeper and clean toilets bathrooms which was not acceptable to petitioner as he was working as machine operator in the company as alleged in complaint dated 10-2-2012 sent to Labour Officer, Una but thereafter also respondent continued to send inconsequential and unwarranted letters to petitioner calling him to resume duty.

14. It has rightly been contended by Ld. Counsel for the respondent that it is uncertain from affidavit of petitioner as to who had asked the petitioner to clean bathrooms rather petitioner made an excuse not to work and remained absent from duty. In cross-examination, petitioner has specifically admitted that respondent had never asked him to not come for duty which clearly supports plea of respondent that it never disallowed petitioner to work and at the same time plea of abandonment of job by petitioner can be safely inferred. It has further been admitted by petitioner in cross-examination that he had not attended his duty after 10-2-2012. Self stated that he did not resume duty because he was asked to clean bathrooms besides admitted that on 10-2-2012 onwards, he did not move any application for leave and absented from duty. If respondent had not been denied to resume duty on 10-2-2012 or thereafter as disclosed by petitioner in cross-examination, it would be unsafe to hold that respondent had terminated service of petitioner on 9-2-2012 rather *vide* letter dated 25-9-2011. Ex. RW2/C addressed to petitioner he had been called upon to resume duty within 72 hours failing which proper departmental inquiry would be conducted against him and this letter was despatched on address of the petitioner as is evident

from postal receipt Ex. RW2/M. Ex. RW2/N is another letter dated 23-3-2012 in which allegation of unauthorized absence as well as loss caused to the respondent for spoiling 2000 spines was made. This letter was despatched vide registered letter as is evident from postal receipt Ex. RW2/A and same has remained un-replied by petitioner. As such, plea of respondent that petitioner had abandoned the job who never intended to resume work gets established irrespective of fact that petitioner had reported for duty on 8-2-2012 as stated by RW2 Govind Ram working as Senior Manager, HR. In his detailed affidavit Ex. RW2/A said Govind Ram deposed having made correspondence with the petitioner to resume duty which he did not join. He has denied that on 8-2-2012 petitioner had joined duty on being called by respondent and has further denied that petitioner was asked to clean toilet and bathrooms. Be it stated that no witness has been examined by petitioner which could establish that contrary to his service conditions, petitioner was asked to do work which was not accepted by petitioner as stated above and consequently he did not resume duty. In such circumstances when petitioner had applied for casual leave for ½ day in afternoon as is evident from Ex. R4 leave application form dated 8-2-2012 on which petitioner on oath has admitted his signature and correspondingly there is no evidence on record to show that at the instance of Conciliation Officer petitioner had gone to attend duty as was called by respondent but respondent RW2 in the witness box had completely repudiated claim of the petitioner that petitioner had joined of his own on 8-2-2012. Otherwise also, there is contradictory statement of petitioner that during conciliation proceedings Ms. Meenakshi, Assistant Manager had appeared who told Conciliation Officer that there was no vacancy whereas facts remains there existed vacancy and the petitioner was called to join. On plea of being asked to clean toilet, he did not join duty instead filed a complaint against respondent. It has been denied by RW2 in cross-examination that Meenakshi had appeared before Conciliation Officer and told that another worker had been appointed in place of petitioner and whenever there would be vacancy petitioner would be engaged. Be it stated that in its reply respondent has alleged that vacant post of helper was filled on 13-6-2012 after dismissal of petitioner but no question to this effect was asked to RW2 Govind Ram. RW2 has further denied that petitioner had not been asked to join duty again several times before the charge- sheet and departmental inquiry.

15. Precisely, case of petitioner remains that he was terminated from service prior to departmental inquiry whereas petitioner himself was uncertain as to when he was actually terminated and how he did infer being terminated from service by respondent either on 23-9-2011 or 10-2-2012 as in his own pleadings in para No. 6, he has stated that vide letter dated **25.10.2011** respondent exhibited **intention to terminate service of petitioner**. If petitioner had actually been terminated on 23-9-2011, it was highly improbable that on 25-10-2011 respondent exhibited intention to terminate service of petitioner. Otherwise also, falsity of statement of claim made by the petitioner gets surfaced from his cross-examination on the point of his initial engagement in the year 2006 as claimed by him but this fact gets contradicted rather belied from Ex. R1 dated 1-1-2008 appointment letter addressed to petitioner which revealed that petitioner was appointed in 2008 as helper on fixed salary subject to certain terms and conditions as enumerated in appointment letter aforestated. Petitioner claimed that he was appointed as machine operator but in his cross-examination he has in unambiguous terms admitted that he was to maintain spine machine properly. He has admitted that if he maintained spine machine properly production quality would be proper. As such, being entrusted with duty of cleanliness of machine so that proper production took place, the petitioner had factually omitted to perform his duties in proper manner due to which 2000 spines were spoiled as has been admitted by petitioner's own witness PW2 and also mentioned in inquiry report. Ex. RW1/E dated 7-5-2012 submitted by RW1 M.L. Kalra and as such after having caused loss to the respondent of 2000 spines as stated above which constituted dereliction of duty on the part of petitioner he made concocted story that respondent did not allow him to join on 23-9-2011 and thereafter he had been coming at factory gate for about 2 months to join duty but did not inform

Labour Inspector Amb whereas the respondent had consistently been corresponding with petitioner to join duty which he did not join instead avoided to acknowledge all registered letters sent by respondent.

16. In the case in hand, respondent has led sufficient reliable evidence proving the same by oral as well as documentary evidence that petitioner never intended to resume duty despite several letters i.e. Ex. RW1/C dated 25-9-2011 Ex. RW2/D dated 1-10-2011 Ex. RW2/E dated 19-10-2011 (postal receipt Ex. RW1/F) Ex. PW2/G letter dated 29-10-2011 (postal receipt Ex. RW2/G) sent to him which were registered and delivered at his address but he did not join his duty. Finally, petitioner had joined on 8-2-2012 in afternoon and had submitted application for leave and thereafter raised demand notice dated 10-2-2012 Ex. P10 which was not valid as was not addressed to respondent and thereafter he continued to unauthorizedly absent from 9-2-2012 in particular again absented despite the direction of respondent given to petitioner several times to join duty as is evident from registered letter dated 23-3-2012 Ex. RW2/N. It can be safely concluded that despite direction to join duty vide several registered letters as has come in evidence petitioner remained unauthorizedly absent from duty. As such, from evidence on record as referred to above, it would be unsafe to hold that petitioner was either terminated on 23-9-2011 or 9-2-2012 as claimed in the claim petition who was worked on 8-2-2011 (forenoon) and had left office without information without applying for leave from respondent and thus was unauthorizedly absenting.

17. Before concluding that petitioner was neither terminated on 23-9-2011 nor 9-2-2012, it is relevant to refer to evidence adduced by the respondent, the manner in which inquiry was conducted against petitioner who initially caused financial loss as stated in charge sheet no. 818 and also for continuous unauthorized absence from 23-9-2011 till 7-2-2012 and 10-2-2012 onwards despite issuance of letters dated 1-10-2011, 1-3-2012, 22-2-2012. In this case, inquiry report was submitted by one Mr. M.L. Kalra RW1. In the witness box as RW1 said M.L. Kalra, RW1 has sworn in affidavit Ex. RW1/A before this court deposed on oath that he was appointed as Inquiry Officer by factory manager *vide* letter No. 820 dated 4-4-2012 to inquire charge leveled against claimant/petitioner *vide* charge sheet No. 818 dated 23-3-2012 and 823 dated 23-4-2012. He has specifically stated that the inquiry of charge-sheet dated 23.3.2012 was fixed on 10-4-2012 and for charge-sheet dated 23-4-2012 on **1-5-2012** at **11.30 A.M. in office of HR Department of LPT Pvt. Ltd. Unit-I Gagret** for which petitioner was duly notified. He has specifically stated that inquiry was held on 10.4.2012 as scheduled but petitioner did not appear and was awaited for 1st May, 2012 for which intimation was sent vide letter dated 10-4-2012 at his home address under registered A.D. cover No.748154019 dated 11-4-2012. He has further stated that inquiry was held on 1-5-2012 and had thereafter fixed both the charge-sheet dated 23-3-2012 and 23-4-2012 on same day but Sunil Kumar (petitioner) again remained absent from inquiry and did not inform Inquiry Officer. The petitioner refused to receive letter dated 11-4-2012 and notice of inquiry No. 824 dated 25-4-2012 sent to him at his home address through registered letter. The said letter was sent through time keeper on 26-4-2012 but again after reading both the letters sent by respondent petitioner refused to accept by stating that he was aware about the next date of inquiry *i.e.* fixed on 1-5-2012. He had deliberately avoided to participate in proceedings before Inquiry Officer and thus was rightly proceeded exparte. RW1 has further stated letters sent were returned back *vide* postal authority with the remarks 'Refused by the Addressee'. It has been clearly stated that this witness that petitioner was fully aware about domestic inquiry being conducted against him which was fixed on 1.5.2012 but he had avoided to appear despite sending registered letters as well as Pardeep Kumar Timekeeper in office of respondent at his residential address as well.

18. To prove misconduct and charges levelled against petitioner seven witnesses 29 documents were examined in proceedings held on 1-5-2012 and 2-5-2012 and on the basis of

documentary and oral evidence, Inquiry Officer (RW1) had given inquiry report Ex. RW1/E against the petitioner. It has been clearly stated that petitioner had been given reasonable opportunities to repudiate the claim of respondent but he did not appear before RW1 to contest the proceedings. In cross- examination, RW2 has shown inability to tell if petitioner did not appear as he had also been directed, stated of his own petitioner was asked to put his claim before Inquiry Officer which he did not do. It is evident from Ex. RW2/B dated 23-9-2011 which is complaint made by shift incharge against petitioner who refused to clean spine machine in presence of Nirmal Singh, Sr. Manager (Production) of respondent company. Similar version from the mouth of RW2 Shri Govind Ram Sr. Manager, HR who has fully supported version of RW1 the manner which inquiry was conducted and various registered letters as stipulated in his affidavit were served to petitioner but did not respond back and even refused to receive letters. In cross-examination, Ld. Counsel for petitioner has not extracted any fact which could demolish of plea of respondent for having not conducted departmental inquiry in fair and proper manner against petitioner. Even no question had been asked to RW1 about non-service of petitioner during the departmental proceedings. Cross-examination of RW2 reveals that inquiry had been initiated against petitioner who was dismissed from service *vide* letter dated 19-5-2012 Ex. RW2/Z-1. RW2 had admitted that during inquiry proceedings subsistence allowance was not given to petitioner which would not effect on the merits of this case RW2 has maintained in cross-examination that petitioner had been paid salary till September, 2011 and salary for the month of February 2012 has remained un- disbursed which could be taken by petitioner at any time. In any case non-payment of salary for the month of February, 2012 shall have no consequence on fair domestic inquiry and similarly non payment of subsistence allowance would not vitiate the same.

19. Ld. Counsel for the respondent has taken me through appointment Ex. R1 dated 1-1-2008 which provides terms and conditions of appointment under the general rules and regulations stipulating that **if at any time in the company's opinion** which will be final in this matter, if petitioner was found guilty of disobedience in his behaviour, negligence or found guilty of dishonestly, the service of petitioner could be terminated without any notice. Ld. Counsel for respondent further stated that petitioner had signed this appointment letter Ex. R1 as well as accepted the conditions referred-to-above after understanding contents of the same which were applicable and enforceable against petitioner and this fact has been admitted by petitioner in cross-examination. Thus, having caused negligence of such a nature which was in performance of his duty resulted in loss of about Rs.20,000/- to respondent, the respondent in its discretion could terminate service of petitioner even on the basis condition of appointment letter dated 1-1-2008 Ex. R1 which has although not been done in this case as respondent instead recoursing to any enforcing conditions of appointment letter had raised charge-sheet holding a regular departmental inquiry. Non appearance of respondent despite above service before Inquiry Officer is manifestly suggestive of the fact that petitioner had nothing put forth to controvert allegation as raised in charge-sheets.

20. Ld. Counsel for respondent has placed reliance upon the judgment of Hon'ble High Court of Delhi reported in **2013 LLR 1044** and relevant para of the judgment is reproduced below for reference:

> "Enquiry. Delinquent declined to appear in the enquiry despite opportunities given to him. Held, he was rightly proceeded *ex-parte*. There is no reason pleaded by the petitioner as to why the evidence of the Management, as led, should not be believed...

Similar view was held by Hon'ble Apex Court in its judgment reported in **2008 LLR 715** titled as **Chairman and MD, V.S.P. & Ors.** Vs. **Goparaju Sri Prabhakara Hari Babu.**

21. Reliance has further been placed on judgment of Hon'ble Apex Court report in **2008 LLR 113** titled as **M/s. L&T Komatsu Ltd.** Vs. **Mr. N. Udayakumar,** it was observed by the

Hon'ble Apex Court that leave was not being matter of right, habitual absence **absenteeism amounts to gross violation of discipline and punishment of dismissal was justified.** Reliance has also been placed on another judgment of Hon'ble Apex Court reported in **2008 LLR 449** titled as **Board of Directors, H.P.T.C. and Another vs. K.C. Rahi** and the relevant para is reproduced below:

> "Enquiry. *Ex-parte*-Justification of. Notice sent to concerned employee followed by publication in 'Tribune'. Enquiry proceeded ex-parte. Delinquent held guilty by disciplinary authority. His services terminated. Finding of Tribunal that he intentionally avoided service of notice and not participate in inquiry. Plea of principles of natural justice deemed to have been waived. He is estopped from raising it...."

Relying upon above said judgments, it has been contended that petitioner was habitual absentee who did not bother to report for duty and his dismissal by respondent after holding proper inquiry could not be challenged by petitioner moreso when he was afforded reasonable opportunity of being heard.

22. Ld. Counsel for the respondent relied upon another judgment of Hon'ble Apex Court reported in **2007 LLR 1009** titled as **Bank of India & Ors.** Vs. **T. Jogram** and the relevant para is reproduced below for reference:

> "Disciplinary proceedings. Validity of. When the order as passed is not violative of rules/regulations/statutory provisions. The inquiry cannot be set aside in a casual manner. **The administrative and disciplinary action of the respondent bank. Cannot be the subject-matter of judicial review, once they followed the due process of law. It is well-settled that judicial review is not against the decision, it is against the decision making process.** There being no allegations of procedural irregularities/illegality and also there being no allegation of violation of principles of natural justice and the allegation of *mala fide* not substantiated. No prejudice, whatsoever, was caused to the respondent. The Court cannot sit in appeal over those findings and assume the role of Appellant Authority⋯.."

In view of foregoing discussions, in particular judgments relied by Ld. Counsel for respondent, it is held that petitioner has been rightly dismissed from service by respondent on the basis of inquiry report Ex. RW1/E prepared by Inquiry Officer RW1 M.L. Kalra.

23. Ld. Counsel for petitioner has vehemently contended placing reliance upon the judgment titled as **United Bank of India** Vs. **Sidhartha Chakraborty** reported in **(2007) 7 SCC 670** that during pendency of conciliation proceedings, petitioner could not have been terminated by respondent either on 23-9-2011 or 9-2-2012. On other hand, Ld. Counsel for respondent repudiating the arguments advanced by Ld. Counsel for petitioner has relied upon Ex. P20 conciliation proceedings before the Labour Inspector Ex. P20 referring to it contents *vide* which petitioner was directed to join duty with respondent which he did not comply. Moreover, there is no reliable evidence to show that petitioner was terminated either on 23-9-2011 or 9-2-2012 as stated above whereas case of the respondent remains that despite calling upon petitioner to join duty *vide* various registered letters as has come in evidence he did not respond despite having committed financial loss to the respondent company as mentioned in foregoing paras due to which the respondent was constrained to initiate departmental inquiry *qua* financial loss caused to company and also continued absence of petitioner from duty in which petitioner did not participate and failed to appear and was thus proceeded exparte by Inquiry Officer and report was submitted against the petitioner and thereafter again registered notice Ex. RW2/X was sent along-with copy of inquiry report to which petitioner again did not respond due to which the respondent had dismissed petitioner from service vide order EX. RW2/Z1,

Ex. RW2/Z3 is report of postal employee *qua* service Ex. RW2/Z1 on petitioner. It can be seen from the evidence on record that petitioner has failed to establish that his service had been terminated on above stated two dates as mentioned in the reference so received from the appropriate govt. and conciliation proceedings Ex. P20 which ended on 27th March, 2012 petitioner was directed by Conciliation Officer to join duty with respondent who remained absent thereafter.

24. It has been emphasized by the Ld. Counsel for the petitioner that respondent was required to seek permission under Section 33(2) (b) of the Act before imposing penalty and has relied upon the judgment of Hon'ble Apex Court titled as **Management Pandiyan Roadways Corp. Ltd.** Vs. **N. Balakrishnan** reported in **2007(4) SC 657**. Reliance has further been placed on judgment of Hon'ble Apex Court reported in **2002(1) SC 181** titled as **Jaipur Zila Sanskari Bhoomi Vikas Bank Ltd.** Vs. **Shri Ram Gopal Sharma & Ors.** On the other hand, repudiating arguments advanced by the Ld. Counsel for the petitioner, Ld. Counsel for respondent has contended with vehemence that permission under Section 33 (2) (b) of the Act was not at all required to be obtained by respondent as petitioner had been dismissed on 19-5-2012 whereas the conciliation proceedings ended on 27-3-2012 directing petitioner to join duty with respondent who had been unauthorizedly absenting since 23-9-2011. In support of his contention, he has placed reliance upon reference received from appropriate govt. and evidence on record which showed that factually the petitioner was neither terminated on 23-9-2011 nor on 10-2-2012 by respondent for which two separate demand notices Ex. P2 and Ex. P10 had been issued by the petitioner and thus when petitioner had not been terminated who was absenting from duty preceded by incident in which he had caused loss due while performing his duties in gross negligent manner on the intervening night on 21-9-2011 and 22-9-2011. Be it stated that there is sufficient reliable evidence on record to show that factually the petitioner was asked to join duty by respondent by sending various letters as has come in the evidence as he had been absenting from 23-9-2011 and after joining on 8th February, 2012 he again applied for half day leave and thereafter did not join duty with the respondent on the pretext he was asked to clean bathroom, toilets and at the same time took stand that he would not join till his entire arrears of salary was paid by respondent as is evident from Ex. P20 which further establishes that petitioner after absenting from duty deliberately had abandoned the job and for joining back to job was putting conditions as discussed in foregoing paras. At the cost of repetition, it may be erroneous to mention here that petitioner himself had been absenting from duty since 23-9-2011 till 7-2-2012 unauthorizedly despite reliable evidence on record showing that respondent issued registered letters to petitioner to join duty and thereafter on 8-2-2012 in the afternoon again absented and did not join duty thereafter. The case of the respondent simplicitor is that due to continued absence from duty after causing loss of Rs. 20,000/- respondent had initiated departmental inquiry against petitioner and was dismissed from service as findings of the inquiry report revealed misconducts *qua* causing loss to respondent company by working in negligent manner and unauthorized absence stood proved. There is ample evidence on record suggesting that petitioner had not deliberately joined the proceedings in departmental inquiry despite due service of notices/letters issued by Inquiry Officer as has come in the evidence on record and thereafter petitioner was dismissed *vide* order dated 19-5-2012 Ex. RW2/Z1.

25. In so far as seeking permission envisaged under Section 33 (2) (b) of the Act is concerned, it would be relevant to go through the pleadings of the petitioner in which he has not stated even a single word *qua* violation of provision of Section 33 (2) (b) of the Act. Significantly, in rejoinder filed by petitioner, he had merely replied eight paragraphs of reply of respondent to claim petition and remaining paragraphs *i.e.* paragraphs No. 9 to 13 have remained un-replied as there is no specific denial to replies to these paras and thus omission on the part of petitioner shall have serious consequence on merits of the case as neither in the claim petition, the petitioner had alleged requirement of seeking permission from this court nor

in rejoinder when respondent justified his action by dismissing petitioner after holding domestic inquiry when petitioner had sufficient opportunity to repudiate plea of respondent in rejoinder qua dismissal of petitioner after holding domestic inquiry. Since conciliation proceedings were not pending before the conciliation officer and petitioner had been directed to join on duty on 27-3-2012 as per the proceedings Ex. P20 who did not join and thereafter petitioner had been dismissed from service on 19-5-2012 after holding domestic inquiry. In such like situation, the respondent was not required to obtain permission under Section 33 (2) (b) of the Act as no conciliation proceedings were pending. The judgments (supra) referred to by ld. counsel for petitioner which dealt with nature of provision under Section 33 (b) (2) of the Act being in the nature shield against victimization and unfair labour practice by the employer during pendency of industrial dispute It has rightly been contended by Ld. Counsel for respondent that there existed no 'industrial dispute' as petitioner had not been terminated on two dates as mentioned in claim petition and as such when conciliation proceedings Ex. P20 ended with direction to petitioner to join duty with respondent, certainly no industrial dispute was pending in particular on 19-5-2012 when petitioner was dismissed on the basis of departmental inquiry conducted by respondent. In the case in hand factually no industrial dispute was pending on date of dismissal *i.e.* 19-5-2012 instead respondent had after following needful procedure on the basis of proceedings in inquiry passed order of dismissal of petitioner. As such, dismissal of petitioner cannot be stated to be illegal or unjustified in violation of provisions of Section 33 (b) (2) of the Act. At the cost of repetition, it may be stated that reference primarily related to determination of fact if termination of petitioner on 23-9-2011 or on 10-2-2012 was illegal or unjustified. Since petitioner had not been terminated on these dates rather he was dismissed on 19-5-2012 vide order Ex. RW2/Z1, it cannot be stated that respondent had illegally terminated petitioner on either of these two dates as discussed in foregoing paras.

26. Ld. Counsel for the petitioner, on the other hand has not given any relevant case law repudiating claim of respondent on the point of lapses or irregularity in departmental inquiry conducted by respondent. As such, in view of various judgments referred to above relied by respondent, there is no scope for inferring in the findings of the Inquiry Officer who afforded fair opportunities of being heard to petitioner and despite that petitioner did not appear and was thus rightly proceeded against *exparte*. The exparte inquiry report Ex. RW1/E was submitted before competent authority as stated in pursuance to which show cause notice was issued to the petitioner to which petitioner did not file reply and consequently had been dismissed from service. In view of foregoing discussions, Issue No.1 is decided in negative holding that petitioner was not terminated who had factually abandoned the job and thus the same cannot be stated to be illegal and unjustified and for said reason, petitioner would not be entitled for reinstatement in service, back wages, seniority, service benefits and compensation whereas issues No. 4 and 6 are answered in affirmative and all these issues are decided against the petitioner and in favour of respondent. Issue No. 3 is deiced in affirmative holding that petitioner himself absented from duty, caused financial loss to the respondent and despite vigorous follow up of the respondent asking to petitioner to resume duty did not join duty and as such petitioner is estopped from filing of claim petition. Issues as stated above are decided accordingly.

Issue No. 2

27. Ld. Counsel for the respondent has contended that claim petition is not maintainable as it was not clear either from claim petition or from reference as to when the petitioner had been actually terminated either on 23-9-2011 or 9-2-2012. Since the petitioner was claimed to have been terminated on 23-9-2011 or 9-2-2012 he could legitimately raise grievance and could seek redressal of grievance *qua* reinstatement in service and back wages etc. Thus, I see no any substance in the arguments that claim petition is not maintainable. Issue No. 2 is answered in negative in favour of petitioner and against the respondent.

Issue No. 5

28. This issue was not pressed by the Ld. Counsel for the respondent and this issue is decided as unpressed in favour of petitioner and against the respondent.

Relief

29. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed, leaving the parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2018.

Sd/
K. K. SHARMA,
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

ब अदालत श्री अनिल कुमार, तहसीलदार एवं कार्यकारी दण्डाधिकारी, कुल्लू,
जिला कुल्लू, हि0 प्र0

केस नं0 : 06/ME/T/2019 दिनांक : 08–02–2019

श्री चमन लाल पुत्र श्री चन्दे राम, गांव मनखड़ी, डाकघर नेऊली, तहसील व जिला कुल्लू, हि0 प्र0

श्रीमती नीमू उर्फ नीमा देवी पुत्री श्री डोले राम, गांव जां, डाकघर बराधा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 .. प्रार्थीगण।

बनाम

आम जनता .. प्रतिवादीगण।

विषय.–– प्रार्थना–पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम, 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण उपरोक्त ने दिनांक 08–01–2019 को इस अदालत में प्रार्थना–पत्र पेश किया है कि उन्होंने दिनांक 03–01–2018 को हिन्दू रीति–रिवाज के अनुसार स्थान जां में शादी कर ली है और तब से दोनों पति–पत्नी के रूप में रहते चले आ रहे हैं परन्तु प्रार्थीगण द्वारा अपनी शादी का इन्द्राज सम्बन्धित पंचायत में नहीं करवाया है।

अतः सर्वसाधारण को व सगे सम्बन्धियों को इस इश्तहार द्वारा सूचित किया जाता है कि किसी भी व्यक्ति को उपरोक्त प्रार्थीगण की शादी को सम्बन्धित पंचायत के अभिलेख में दर्ज करने बारे कोई उजर व एतराज हो तो वह दिनांक 08–03–2019 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत पेश होकर अपना उजर व एतराज पेश कर सकता है। इसके उपरान्त कोई भी उजर व एतराज प्राप्त न होने की सूरत में नियमानुसार शादी दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 08–02–2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी एवं तहसीलदार
कुल्लू, जिला कुल्लू, हि0 प्र0।

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ब अदालत श्री अनिल कुमार, तहसीलदार एवं कार्यकारी दण्डाधिकारी, कुल्लू, जिला कुल्लू, हि0 प्र0

केस नं0 : 07/ME/T/2019 दिनांक : 08–02–2019

श्री धनी राम पुत्र श्री पेख राम, गांव बुराग्रा, डाकघर खड़ीहार, तहसील व जिला कुल्लू, हि0 प्र0।

श्रीमती चन्द्रामणी पुत्री श्री नाथू राम, गांव खारशी, डाकघर भूट्ठी, तहसील व जिला कुल्लू, हि0 प्र0
प्रार्थीगण।

बनाम

आम जनता प्रतिवादीगण।

विषय.–– प्रार्थना–पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम, 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण उपरोक्त ने दिनांक 22–01–2019 को इस अदालत में प्रार्थना–पत्र पेश किया है कि उन्होंने दिनांक 25–03–2014 को हिन्दू रीति–रिवाज के अनुसार स्थान खारशी में शादी कर ली है और तब से दोनों पति–पत्नी के रूप में रहते चले आ रहे हैं परन्तु प्रार्थीगण द्वारा अपनी शादी का इन्द्राज सम्बन्धित पंचायत में नहीं करवाया है।

अतः सर्वसाधारण को व सगे सम्बन्धियों को इस इश्तहार द्वारा सूचित किया जाता है कि किसी भी व्यक्ति को उपरोक्त प्रार्थीगण की शादी को सम्बन्धित पंचायत के अभिलेख में दर्ज करने बारे कोई उजर व एतराज हो तो वह दिनांक 08–03–2019 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत पेश होकर अपना उजर व एतराज पेश कर सकता है। इसके उपरान्त कोई भी उजर व एतराज प्राप्त न होने की सूरत में नियमानुसार शादी दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 08–02–2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी एवं तहसीलदार
कुल्लू, जिला कुल्लू, हि0 प्र0।

ब अदालत श्री अनिल कुमार, तहसीलदार एवं कार्यकारी दण्डाधिकारी, कुल्लू, जिला कुल्लू, हि0 प्र0

केस नं0 : 08/ME/T/2019 दिनांक : 08–02–2019

श्री विनोद कुमार पुत्र श्री मोहर सिंह, गांव राऊगी, डाकघर कराडसू, तहसील व जिला कुल्लू, हि0 प्र0।

श्रीमती कला देवी पुत्री श्री ठाकर चन्द, गांव सोयल, डाकघर कराडसू, तहसील व जिला कुल्लू, हि0 प्र0 .. प्रार्थीगण।

बनाम

आम जनता .. प्रतिवादीगण।

विषय.––प्रार्थना–पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम, 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण उपरोक्त ने दिनांक 04–02–2019 को इस अदालत में प्रार्थना–पत्र पेश किया है कि उन्होंने दिनांक 17–10–2015 को हिन्दू रीति–रिवाज के अनुसार स्थान सोयल में शादी कर ली है और तब से दोनों पति–पत्नी के रूप में रहते चले आ रहे हैं परन्तु प्रार्थीगण द्वारा अपनी शादी का इन्द्राज सम्बन्धित पंचायत में नहीं करवाया है।

अतः सर्वसाधारण को व सगे सम्बन्धियों को इस इश्तहार द्वारा सूचित किया जाता है कि किसी भी व्यक्ति को उपरोक्त प्रार्थीगण की शादी को सम्बन्धित पंचायत के अभिलेख में दर्ज करने बारे कोई उजर व एतराज हो तो वह दिनांक 08–03–2019 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत पेश होकर अपना उजर व एतराज पेश कर सकता है। इसके उपरान्त कोई भी उजर व एतराज प्राप्त न होने की सूरत में नियमानुसार शादी दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 08–02–2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी एवं तहसीलदार,
कुल्लू, जिला कुल्लू, हि0 प्र0।

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ब अदालत श्री अनिल कुमार, तहसीलदार एवं कार्यकारी दण्डाधिकारी, कुल्लू, जिला कुल्लू, हि0 प्र0

केस नं0 : 09/ME/T/2019 दिनांक : 08–02–2019

श्री रमेश पुत्र श्री रोशन लाल, गांव सरली, डाकघर भेखली, तहसील व जिला कुल्लू, हि0 प्र0

श्रीमती मीना भारती पुत्री श्री गंगा राम, गांव फलाण, डाकघर शालंग, तहसील व जिला कुल्लू, हि0 प्र0 .. प्रार्थीगण।

बनाम

आम जनता .. प्रतिवादीगण।

विषय.–– प्रार्थना–पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम, 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण उपरोक्त ने दिनांक 04–02–2019 को इस अदालत में प्रार्थना–पत्र पेश किया है कि उन्होंने दिनांक 14–12–2017 को हिन्दू रीति–रिवाज के अनुसार स्थान फलाण में शादी कर ली है और तब से दोनों पति–पत्नी के रूप में रहते चले आ रहे हैं परन्तु प्रार्थीगण द्वारा अपनी शादी का इन्द्राज सम्बन्धित पंचायत में नहीं करवाया है।

अतः सर्वसाधारण को व सगे सम्बन्धियों को इस इश्तहार द्वारा सूचित किया जाता है कि किसी भी व्यक्ति को उपरोक्त प्रार्थीगण की शादी को सम्बन्धित पंचायत के अभिलेख में दर्ज करने बारे कोई उजर व एतराज हो तो वह दिनांक 08–03–2019 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत पेश होकर अपना उजर व एतराज पेश कर सकता है। इसके उपरान्त कोई भी उजर व एतराज प्राप्त न होने की सूरत में नियमानुसार शादी दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 08–02–2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी एवं तहसीलदार,
कुल्लू, जिला कुल्लू, हि0 प्र0।

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ब अदालत कार्यकारी दण्डाधिकारी एवं तहसीलदार, भुन्तर, जिला कुल्लू, हि0 प्र0

केस नं0 : 08/MT/19 दायर तिथि : 16–01–2019 तारीख पेशी : 05–03–2019

1. श्री प्रहलाद सिंह पुत्र श्री जोगिन्दर सिंह, निवासी गांव गदोरी, डाकघर मौहल, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0।

2. श्रीमती मीना कुमारी पुत्री श्री देवी सिंह, निवासी गांव गोंधला, डाकघर केलांग, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0।

बनाम

सर्वसाधारण एवं आम जनता

विषय.–– प्रार्थना–पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम, 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण ने दिनांक 16–01–2019 को इस अदालत में प्रार्थना–पत्र मय शपथ–पत्र पेश किये हैं कि उन्होंने दिनांक 16–03–2011 को शादी कर ली है और तब से दोनों पति–पत्नी के रूप में रहते चले आ रहे हैं परन्तु प्रार्थीगण ने अपनी शादी का इन्द्राज सम्बन्धित ग्राम पंचायत शमशी, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में नहीं करवाया है।

अतः सर्वसाधारण व आम जनता को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थीगण की शादी को सम्बन्धित पंचायत के अभिलेख में दर्ज करने बारे एतराज हो तो वह दिनांक 05–03–2019 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार शादी दर्ज करने के आदेश सम्बन्धित ग्राम पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 05–01–2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

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ब अदालत कार्यकारी दण्डाधिकारी, प्रथम श्रेणी एवं तहसीलदार, भुन्तर, जिला कुल्लू, हि0 प्र0

केस नं0 : 11/MT/19 दायर तिथि : 18–01–2019 तारीखे पेशी : 05–03–2019

1. श्री डोला राम पुत्र श्री आत्मा राम, निवासी गांव शिल्हा, डाकघर बरशैणी, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0।

2. श्रीमती ममता पुत्री श्री यान चन्द, निवासी गांव सतरीग, डाकघर ठेला, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0।

बनाम

सर्वसाधारण एवं आम जनता

विषय.––प्रार्थना–पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम, 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण ने दिनांक 18–01–2019 को इस अदालत में प्रार्थना–पत्र मय शपथ–पत्र पेश किये है कि उन्होंने दिनांक 20–12–2017 को शादी कर ली है और तब से दोनों पति–पत्नी के रूप में रहते चले आ रहे हैं परन्तु प्रार्थीगण ने अपनी शादी का इन्द्राज सम्बन्धित ग्राम पंचायत बरशैणी, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में नहीं करवाया है।

अतः सर्वसाधारण व आम जनता को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थीगण की शादी को सम्बन्धित पंचायत के अभिलेख में दर्ज करने बारे एतराज हो तो वह दिनांक 05–03–2019 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार शादी दर्ज करने के आदेश सम्बन्धित ग्राम पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 05–01–2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी, एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

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ब अदालत कार्यकारी दण्डाधिकारी एवं तहसीलदार, भुन्तर, जिला कुल्लू, हि0 प्र0

केस नं0 : 12/MT/19 दायर तिथि : 17–01–2019 तारीख पेशी : 05–03–2019

1. श्री शेर सिंह पुत्र श्री सुख राम, निवासी गांव खड़ीसेरी, डाकघर हुरला, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0।

2. श्रीमती नीता देवी पुत्री श्री ब्रेस्त राम, निवासी फरियाड़ी, डाकघर गुशैणी, तहसील बन्जार, जिला कुल्लू, हि0 प्र0।

बनाम

सर्वसाधारण एवं आम जनता

विषय.––प्रार्थना–पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम, 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण ने दिनांक 17–01–2019 को इस अदालत में प्रार्थना–पत्र मय शपथ–पत्र पेश किये हैं कि उन्होंने दिनांक 09–06–2017 को शादी कर ली है और तब से दोनों पति–पत्नी के रूप में रहते चले आ रहे हैं परन्तु प्रार्थीगण ने अपनी शादी का इन्द्राज सम्बन्धित ग्राम पंचायत रोट, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में नहीं करवाया है।

अतः सर्वसाधारण व आम जनता को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थीगण की शादी को सम्बन्धित पंचायत के अभिलेख में दर्ज करने बारे एतराज हो तो वह दिनांक 05–03–2019 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार शादी दर्ज करने के आदेश सम्बन्धित ग्राम पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 05–01–2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

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ब अदालत कार्यकारी दण्डाधिकारी एवं तहसीलदार, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0

केस नं0 : 06-DT/2019 दायर तिथि : 30–08–2018 तारीख पेशी : 05–03–2019

श्री पोशु राम पुत्र श्री वेई राम, साकन निवासी गांव व डाकघर मलाणा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0।

बनाम

सर्वसाधारण एवं आम जनता

विषय.––प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री पोशु राम पुत्र श्री वेई राम, गांव व डाकघर मलाणा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 ने इस कार्यालय में प्रार्थना–पत्र मय शपथ–पत्र दिया है कि उसकी पुत्री स्व0 श्रीमती इन्द्रा देवी पत्नी कालू राम की मृत्यु दिनांक 15–03–2013 को स्थान गांव मलाणा, डाकघर मलाणा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में हुई है परन्तु उनकी मृत्यु की तिथि का इन्द्राज किसी कारणवश ग्राम पंचायत मलाणा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 के अभिलेख में न किया है।

अतः इस इश्तहार हजा द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को स्व0 श्रीमती इन्द्रा देवी पत्नी कालू राम की मृत्यु तिथि दर्ज करवाने बारे कोई आपत्ति हो तो वह दिनांक 05–03–2019 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार मृत्यु तिथि दर्ज करने के आदेश सम्बन्धित ग्राम पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 05–01–2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

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ब अदालत कार्यकारी दण्डाधिकारी एवं तहसीलदार, भुन्तर, जिला कुल्लू, हि0 प्र0

केस नं0 : 09/MT/19 दायर तिथि : 21–01–2019 तारीख पेशी : 05–03–2019

1. गोविन्द राम पुत्र श्री जय कृष्ण, निवासी गांव बरौना, डाकघर मनीकर्ण, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0।

2. श्रीमती सूरजा देवी पुत्री श्री तारा चन्द, निवासी गांव रशोल, डाकघर कसोल, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0।

बनाम

सर्वसाधारण एवं आम जनता

विषय.–– प्रार्थना–पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम, 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण ने दिनांक 21–01–2019 को इस अदालत में प्रार्थना–पत्र मय शपथ–पत्र पेश किये है कि उन्होंने दिनांक 20–05–2015 को शादी कर ली है और तब से दोनों पति–पत्नी के रूप में रहते चले आ रहे हैं परन्तु प्रार्थीगण ने अपनी शादी का इन्द्राज सम्बन्धित ग्राम पंचायत मनीकर्ण, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में नहीं करवाया है।

अतः सर्वसाधारण व आम जनता को इस इश्तहार द्वारा सूचित किया जाता है कि किसी व्यक्ति को उपरोक्त प्रार्थीगण की शादी को सम्बन्धित पंचायत के अभिलेख में दर्ज करने बारे कोई एतराज हो तो वह दिनांक 05–03–2019 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार शादी दर्ज करने के आदेश सम्बन्धित ग्राम पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 05–01–2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

ब अदालत कार्यकारी दण्डाधिकारी एवं तहसीलदार, भुन्तर, जिला कुल्लू, हि0 प्र0

केस नं0 : 07/BT/2019 तारीख पेशी : 05–03–2019

प्रेम चन्द पुत्र स्व0 श्री देवी सिंह, निवासी गांव व डाकघर मौहल, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0।

बनाम

सर्वसाधारण एवं आम जनता

विषय.––प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

प्रेम चन्द पुत्र स्व0 श्री देवी सिंह, निवासी गांव व डाकघर मौहल, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 ने इस कार्यालय में प्रार्थना–पत्र मय शपथ–पत्र दिया है कि उसका जन्म दिनांक 06–06–1952 को स्थान गांव व डाकघर मौहल, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में हुआ है परन्तु उसके जन्म की तिथि का इन्द्राज किसी कारणवश ग्राम पंचायत मौहल, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 के अभिलेख में दर्ज न किया है।

अतः इस इश्तहार हजा द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को श्री प्रेम चन्द पुत्र स्व0 श्री देवी सिंह की जन्म तिथि दर्ज करवाने बारे कोई आपत्ति हो तो वह दिनांक 05–03–2019 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार जन्म तिथि दर्ज करवाने के आदेश सम्बन्धित ग्राम पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 05–01–2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

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ब अदालत कार्यकारी दण्डाधिकारी, प्रथम श्रेणी एवं तहसीलदार भुन्तर, जिला कुल्लू, हि0 प्र0

केस नं0 : 10/MT/19 दायर तिथि : 23–01–2019 तारीख पेशी : 05–03–2019

1. खीमी चन्द पुत्र श्री पूर्ण चन्द, निवासी गांव ठौन्जा, डाकघर कसोल, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0।

2. श्रीमती हेती देवी पुत्री श्री कृष्ण चन्द, निवासी गांव कोईशुधार, डाकघर ठेला, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0।

बनाम

सर्वसाधारण एवं आम जनता

विषय.––प्रार्थना–पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम, 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण ने दिनांक 23–01–2019 को इस अदालत में प्रार्थना–पत्र मय शपथ–पत्र पेश किये हैं कि उन्होंने दिनांक 21–01–2018 को शादी कर ली है और तब से दोनों पति–पत्नी के रूप में रहते चले आ रहे हैं परन्तु प्रार्थीगण ने अपनी शादी का इन्द्राज सम्बन्धित ग्राम पंचायत कसोल, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में नहीं करवाया है।

अतः सर्वसाधारण व आम जनता को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थीगण की शादी कोसम्बन्धित पंचायत के अभिलेख में दर्ज करने बारे कोई एतराज हो तो वह दिनांक 05–03–2019 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार शादी दर्ज करने के आदेश सम्बन्धित ग्राम पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 05–01–2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

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In the Court of Shri Raman Gharsanghi (H.A.S.), Special Marriage Officer-cum**-Sub-Divisional Magistrate, Manali, District Kullu, H.P.**

In the matter of :

Sh. Nitin Kumar son of Sh. Pradeep Kumar, resident of House No. 126/1, Hotel Shingar, Model Town, Manali, P.O and Tehsil Manali, Distt. Kullu (H.P.) and Smt. Sapna Devi d/o Shri Karam Singh, resident of Village Kasarla Pairi, P.O. Ratti, Tehsil Sadar, Distt. Mandi, H.P. presently wife of Shri Nitin Kumar, resident of House No. 126/1, Hotel Shingar, Model Town, Manali, P.O and Tehsil Manali, Distt. Kullu H.P. (INDIA).

Versus

General Public

Subject.—An Application for registration of Marriage under Special Marriage Act, 1954.

Whereas Sh. Nitin Kumar son of Sh. Pradeep Kumar, resident of House No. 126/1, Hotel Shingar, Model Town, Manali, P.O. and Tehsil Manali, Distt. Kullu (H.P.) and Smt. Sapna Devi d/o Shri Karam Singh, resident of Village Kasarla Pairi, P.O. Ratti, Tehsil Sadar, Distt. Mandi, H.P. presently wife of Shri Nitin Kumar, resident of House No. 126/1, Hotel Shingar, Model Town, Manali, P.O and Tehsil Manali, Distt. Kullu H.P. (INDIA). has presented an application on 11-02-2019 in this court for the registration of the marriage under Special Marriage Act, 1954. Hence this proclamation is hereby issued for the information of general public that if any persons has any objection for the registration of the above marriage can appear in this court on 10-03-2019 at Manali to object registration of above marriage personally or through an authorised agent failing which this marriage will be registered under this Act, 1954 accordingly.

Given under my hand and seal of the court on 11-02-2019.

Seal. RAMAN GHARSANGHI (HAS),
Special Marriage Officer-cum-*Sub Divisional Magistrate,*
Manali, District Kullu, H.P.

In the Court of Dr. Amit Guleria, H.A.S., Marriage Officer-cum-Sub-Divisional Magistrate, Kullu, District Kullu, H.P.

In the matter of :

1. Veer Chatrath s/o Sh. Ananad Chatrath, r/o Johnson Orchard Mahili, P.O. Katrain, Tehsil and Distt. Kullu.

2. Nikita Kapur d/o Gaur Mohan Kapur, r/o 4, C, Chapel Road Hastings, Kolkata, West Bengal, India. . . *Applicants.*

Versus

General Public

Subject.—Proclamation for the registration of marriage under section 16 of Special Marriage Act, 1954.

Veer Chatrath and Nikita Kapur have filed an application alongwith affidavits in the court of undersigned under Section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 18-11-2018 and they are living as husband and wife since then, hence their marriage may be registered under thes Act, *ibid.*

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 02-03-2019. The objection received after 02-03-2019 will not be entertained and marriage will be registered accordingly.

Issued today on 30-01-2019 under my hand and seal of the court.

Seal. Dr. AMIT GULERIA (HAS),
Marriage Officer-cum-*Sub-Divisional Magistrate,*
Kullu, District Kullu, H.P.

In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar, District Mandi, H. P.

In the matter of :—

1. Sh. Hiteshbhai Kantilal Shrimali s/o Sh. Kantilal Hemchandra Shrimali, H. No. 59, Ishan and Society, B/H. Pradyuman Society, Ramol Road, CTM Ahemedabad at present Astt. Professor at 65-63, Kamand Campus IIT, Mandi, H.P.

2. Smt. Pandya Aartiben Ramanbhai d/o Sh. Ramanbhai Pandya, r/o Sector No. 3/C Plot No. 530/2 Gandhinagar, Distt. Gandhinagar Gujrat (at present wife of Sh. Hiteshbhai Kantilal Shrimali s/o Sh. Kantilal Hemchandra Shrimali, H. No. 59, Ishan and Society, B/H. Pradyuman Society, Ramol Road, CTM Ahemedabad at present Astt. Professor at 65-63, Kamand Campus IIT, Mandi, H.P. . . *Applicants.*

Versus

General Public

Subject.—Application for the registration of Marriage under Section 15 of Special Marriage Act, 1954.

Sh. Hiteshbhai Kantilal Shrimali s/o Sh. Kantilal Hemchandra Shrimali, H. No. 59, Ishan and Society, B/H. Pradyuman Society, Ramol Road, CTM Ahemedabad at present Astt. Professor at 65-63, Kamand Campus IIT, Mandi, H.P. and Smt. Pandya Aartiben Ramanbhai d/o Sh. Ramanbhai Pandya, r/o Sector No. 3/C Plot No. 530/2 Gandhinagar, Distt. Gandhinagar Gujrat (at present wife of Sh. Hiteshbhai Kantilal Shrimali s/o Sh. Kantilal Hemchandra Shrimali, H. No. 59, Ishan and Society, B/H. Pradyuman Society, Ramol Road, CTM Ahemedabad at present Astt. Professor at 65-63, Kamand Campus IIT, Mandi, H.P. have filed an application alongwith affidavits in the court of undersigned under Section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 04-12-2018 according to Hindu rites and customs at Arya Samaj Temple, Moti Bazar, Mandi, Distt. Mandi, H.P. and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 28-02-2019 after that no objection will be entertained and marriage will be registered.

Issued today on 7th day of January, 2019 under my hand and seal of the court.

Seal. Sd/-

Marriage Officer-cum-Sub-Divisional Magistrate,
Sadar, District Mandi (H.P.).

In the Court of Shri Neeraj Gupta, Sub-Divisional Magistrate, Shimla (R), District Shimla (H. P.)

Smt. Punya Vatti Sharma w/o Sh. Puran Dutt Sharma, r/o Village Nadukher, P.O. Basantpur, Tehsil Sunni, District Shimla, Himachal Pradesh.

Versus

General Public . . *Respondent.*

Whereas Smt. Punya Vatti Sharma w/o Sh. Puran Dutt Sharma, r/o Village Nadukher, P.O. Basantpur, Tehsil Sunni, District Shimla, Himachal Pradesh has filed an application alongwith

affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter the correct Name/date of birth of her own name—Smt. Punya Vatti Sharma w/o Sh. Puran Dutt Sharma, r/o Village Nadukher, P.O. Basantpur, Tehsil Sunni, District Shimla, Himachal Pradesh in the record of Secy., Birth and Death, Gram Panchayat Basantpur, Tehsil Sunni, District Shimla.

Sl. No.	Name of the family member	Relation	Date of birth
1.	Punya Vatti Sharma	Own	14-04-1943

Hence, this proclamation is issued to the general public if they have any objection/claim regarding entry of the correct name/date of birth of above named in the record of Gram Panchayat Basabtpur, Tehsil Sunni, District Shimla may file their claims/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 25 -02-2019 under my signature and seal of the court.

Seal.

Sd/-
Sub-Divisional Magistrate,
Shimla (R), District Shimla.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है